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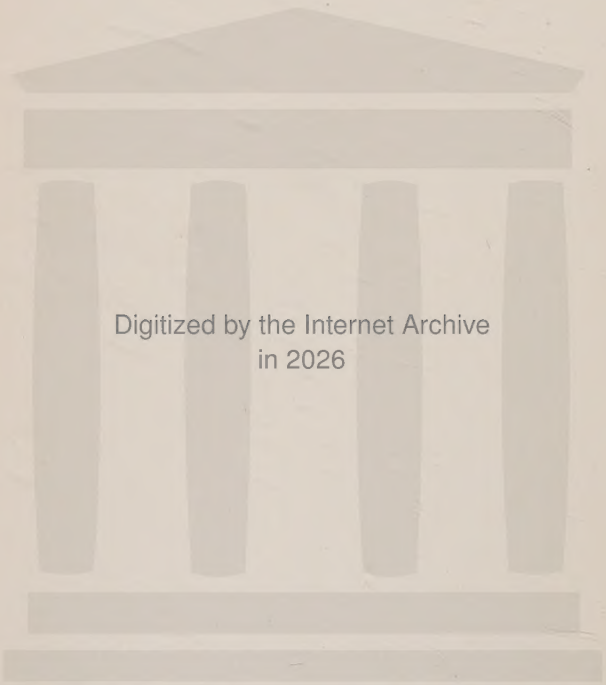

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TERRITORIES AND DEPENDENCIES OF THE UNITED STATES

Their Government and Administration

BY

WILLIAM FRANKLIN WILLOUGHBY

TREASURER OF PORTO RICO

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PREFACE

A FULL consideration of all questions arising out of the expansion of the United States from its limited territory as comprehended within the boundaries of the original thirteen States to its present extent with over-sea possessions, would involve studies along three quite distinct lines: that of the history proper of the movement, or of the causes leading up to, and the circumstances attending, the actual acquisition of new territory; that of an account of the policy pursued by the United States in granting to these new territories political rights, in determining their relations to itself and in organizing forms of government for them; and that of the examination of the great problems, political, economic and educational, arising out of the possession of such territories. A work dealing with all three of these phases in a broad and comprehensive way would make a welcome addition to existing literature. During the present initial stage, however, of the real study of the colonial problem of the United States, and while the factors of that problem, in its modern aspect at least, are as yet so little determined, the preparation of such a work would be exceedingly difficult and it is more than doubtful whether it could be successfully accomplished.

Under these circumstances, there is for the present a manifest advantage in keeping fairly distinct the

three lines of inquiry. The history of our western expansion and of our recent acquisitions in the Atlantic and the Pacific has already been fully given in numerous works, or is still fresh in the minds of most readers. The proper examination of colonial problems, strictly speaking, can only be achieved after a thorough knowledge has been obtained of the political institutions with which the possessions involved are endowed. The present work, therefore, will be concerned with only the second of these three fields—that of the actual policy pursued, and the action taken, by the United States in respect to the government and administration of the various dependent territories which have successively come under its sovereignty, and the conferring of political rights upon their inhabitants. This consideration, in order to keep it within the scope of the American State Series, of which it is a part, must necessarily be largely descriptive in character. While no attempt will thus be made to discuss colonial problems as such, nevertheless every effort will be made in the proper places to call attention to the existence of such problems and to indicate the main considerations therein involved. In this way it is hoped that the present work will pave the way for, or serve as a general introduction to, the study of our colonial problems, in their broadest aspects.

A few words should be said in explanation of the allotment of space to the different subjects to be considered. Comparatively few pages have been given to the description of the government of the organized territories of the United States on the mainland. The

reasons for this are evident: the form of government of the organized territories as laid down in their organic acts is a simple one and permits of statement in brief compass, while the problem of local government within them presents no features differing essentially from those found in the States. Again, owing to the small number of such Territories now in existence, and the likelihood that these few will speedily be admitted into the Union as States, a consideration of their government becomes of constantly less importance. As regards the Territories proper, our chief interest will therefore be centered upon tracing historically the action of the United States in respect to the organization of a government for them at the time of their first acquisition, subsequent changes made in such government, the extent to which the action taken has been the result of a policy deliberately adopted and consistently followed out, and especially the extent to which the experience thus gained has been influential in shaping subsequent action where different conditions have been met with in dealing with our recently acquired insular dependencies.

In the second place, a very large amount of space will be devoted to the treatment of local government and internal administration within the insular dependencies. The problem of government of dependencies has in the past almost invariably been considered from the standpoint of the mother country, and, consequently, almost as if the only consideration involved in the case of each dependency was that of devising a system of central government for it and of determining the relations that such government should have

to the mother country. In point of fact, the establishment of a central government constitutes but the first real step in the solution of the general problem of its administration. There still remains the much more complicated task of working out a proper system of local government and administration and of formulating and enacting the great body of fundamental laws, such as those relating to judicial procedure and police, taxation and finance, banking and currency, education and public works, which in their immediate effects upon the progress of the dependency and the welfare of its inhabitants are, if possible, of even greater importance than that of the particular constitutional system with which the dependency may be endowed as regards its relation to the nation of which it is a part.

There are various reasons why this study of local government and administration is of an importance equal to if not greater than that of the central government. While the latter represents the policy and action of the mother country in respect to the grant of political powers, the former, for the most part, represents the ideas and action of the dependency itself. If the granting or withholding of political rights to the inhabitants of dependent territory and the determination of the exact relations that the government of such dependency shall have to the mother country are matters difficult of wise adjustment, the similar problems of the distribution of governmental powers between the central and local governments within a dependency, and the fixing of the measure of control of the former over the latter, are even more delicate

of solution. In the case of the United States and its dependencies, this matter of local government is of special significance, as the development of self-government in the dependencies constitutes the central or essential feature which markedly distinguishes the policy of the United States from that of other colony-holding nations. It is in local government, moreover, that the inhabitants of the dependencies must receive their political training, and it is upon the capacity that is shown by them in this field they must rest their demand for a greater autonomy and a wider participation in their own central government. It is for these reasons, therefore—the intrinsic importance of the subject, the fact that the problem of the government of dependent territory in the future will be largely this working out by the dependencies themselves of the various questions of their internal government and administration, and the fact that the subject up to the present time has received no detailed attention—that the apportionment of so large an amount of space to this branch of our study has been felt to be amply justified.

W. F. W

April, 1905.

TERRITORIES AND DEPENDENCIES OF THE UNITED STATES

TERRITORIES AND DEPENDENCIES OF THE UNITED STATES

THEIR GOVERNMENT AND ADMINISTRATION

CHAPTER I

INTRODUCTION

Periods of Expansion. Among the prime factors that have determined the character and history of the United States from the beginning of its existence, none has been of greater importance than the possession by it of a vast territory abounding in resources and fertility and suitable in every way for permanent occupation and settlement. As the nation grew, and before the pressure of increasing population scarcely had been felt, this area was constantly added to. At first, taking the form of successive pushings-forward of the boundaries, until there had been included all of the adjacent territory, which either was but partly settled or the ties of which to another country were not of sufficient strength to maintain it in its allegiance, this movement of expansion has at length leapt all barriers of distance and, as the result of rapidly moving events, has brought under the sovereignty of the United States, first, a great territory lying far to the north, then islands lying in both the Atlantic and Pacific oceans, and finally, returning to the mainland, has added a valuable strip of land to the south,

where the two American continents are joined together.

Looking back over the course of these events, one cannot fail to be impressed with the slight extent to which this great movement has been consciously planned or directed by those having in charge the destinies of the nation; how largely, indeed, it has practically been beyond their powers to control. The United States, thus, though it has never deliberately or consciously pursued an imperialistic policy, yet to-day finds itself in fact possessed of a territory truly imperial—in its extent, in the variety of the people or races occupying it, and in the wide difference of the conditions that have to be met in its government and administration. Lying as a broad belt across the heart of a great continent, its main territory now comprehends forty-five self-governing commonwealths and four territories rapidly moving toward the same status of statehood, many of which in themselves alone possess the area, population and potential material resources for the making of a nation. As dependent territory to this, but none the less under the sovereignty of the United States, are the vast territories of Alaska and its adjacent islands to the north, Porto Rico in the West Indies, the Hawaiian, Guam and Samoan islands in the middle Pacific, the Philippine Archipelago in the Far East, the Midway, Wake, Howland and Baker islands lying almost as stepping-stones in the ocean, and the ten-mile broad canal strip across the Isthmus of Panama.

In the history of the acquisition of this vast territory it is possible to distinguish three fairly well-

defined periods: the first beginning with the confirmation by the Treaty of 1783 with Great Britain of the claims of the original thirteen States to the territory stretching to the west as far as the Mississippi River, and ending, in 1853, with the addition of territory growing out of the admission of the Republic of Texas and the war with Mexico; the second covering the period of forty-five years, from the latter date to 1898; and the third beginning with the annexation of the Sandwich or Hawaiian Islands in 1898 and terminating with the practical acquisition, in 1904, of the strip of land across the Isthmus of Panama through which the inter-oceanic canal is to be constructed. This division of the history of the expansion of the United States into these three periods is not one made arbitrarily for the purpose of facilitating its consideration. The periods represent events, motives and consequences so dissimilar in character that it is only by making the distinction between them as clear as possible that their fundamental significance can be appreciated.

The first period, covering the years from 1783 to 1853, may be said to represent the period of logical and inevitable growth during which a nation was finding itself and rounding out its boundaries. During this period the territory acquired was contiguous to that already possessed, conformed to the latter in general character, and was but sparsely settled and almost wholly undeveloped. It thus afforded every opportunity for settlement by emigrants from the old territory and the consequent extension to it of American institutions, political or otherwise. Great as was the

importance of this extension of the boundaries to the Pacific Ocean, it represented, however, no violent break with the political traditions or principles of the people, except as regards the one point of the right of a nation to acquire and govern new territory, and that point was definitely settled once for all at the very outset. There was involved only the steady extension of the control, and the spread of the unmodified political institutions, of the United States. The years from 1853 to 1898 were years of comparative inactivity, the only events of importance occurring during them being the annexation of the Howland and Baker islands in 1857, and the acquisition of Alaska and of Brooks islands in 1867. Howland and Baker islands are so small and unimportant that their annexation is without significance. The same, in so far as the matter of the government of dependent territory is concerned, may almost be said of Alaska, notwithstanding the great area and the present promising future of that territory. At the time of its acquisition Alaska was believed to be almost wholly unfit for permanent habitation, and was thus considered as a territory more for administration as a public domain than as one for which a scheme of government had to be devised. Its acquisition brought with it no new problem and its possession has, in fact, given rise to no questions differing in any essential respect from those presented by earlier additions. This period may, therefore, be said to be one during which the progress of expansion was largely suspended and the energies of the nation were being devoted to the development of the territory already possessed.

The third period, extending from 1898 to the present time, short as it is, is filled with events of great importance—events marking the development of an entirely new phase in the expansion of the United States and to a certain extent representing a direct breaking with precedent. By the acquisitions made during this period the United States has definitely entered the class of nations holding and governing over-sea colonial possessions. In all prior acquisitions, except those of the small islands, which were so unimportant that no form of government for them was required, the essential principle upon which the acquisitions were based was that of the incorporation of the new territory into the Union upon full equality with the other States as soon as their population and development should render such action feasible. The ultimate result always in view was that of a single union of commonwealths all enjoying the same general form of government, possessing the same political rights and privileges, and together embracing all territory in any manner under the sovereignty of the United States. By the acquisition of Samoa, Hawaii, Porto Rico, Guam and the Philippine Islands, the United States was for the first time confronted with the possibility, if not the certainty, that for an indefinite time to come the territory under its sovereignty would have to be divided into two classes having a different political status; the one constituting the United States proper and enjoying full political rights and privileges, and the other dependent territory in subordination to the former and having its form of government and the rights of its inhabitants

determined for it. It is true that it is still possible for the United States to maintain the theory that such territory may ultimately attain a development that will warrant its complete incorporation into the Union. The maintenance of that theory, however, does not prevent the problems of government presented by the acquisition of this territory from differing essentially from those presented by prior acquisitions. In a word, whatever may be the theory, as a practical condition the United States, through these acquisitions, is now confronted with the problem of governing and administering dependent or colonial possessions in precisely the same way as is England or are other European nations that have deliberately embarked upon a colonial policy.

General Policy of the United States Toward Dependencies. That this new phase of the expansion of the United States is one of far-reaching significance needs scarcely to be stated. Not only has it meant the enforced abandonment by the United States of its traditional policy of non-intervention in foreign affairs and its definite entrance into the wide field of world-politics, a change that was bound to come sooner or later, but, more important still, it has unavoidably exerted a profound influence upon the whole theory of government as held by the American people in the past. Such fundamental principles as those which declare that no government can be justified that does not rest upon the consent of the governed, that there should be no taxation without representation, that no true liberty can exist that is not guaranteed by the

right of trial by jury, etc., principles that were believed to lie at the very basis, and constitute the very essence, of American political philosophy, have had to be reopened for discussion; and already it is apparent how great a transformation has taken place in the minds of the people regarding these and other questions going to make up our political creed. Into these and similar lines of thought, or into the question as to whether the action of the past few years has been wise or not, and whether a return to old principles should not yet be made, interesting and vital though they are, we cannot here enter: all that falls within the scope of the present work to do is to note their existence as bearing upon the description of the action that has actually been taken.

While emphasis has been placed in the foregoing paragraphs upon the essential differences between the periods into which we have divided the history of the expansion of the United States, no less emphasis should be laid upon the fact that these differences do not extend to the actual measures that have been taken by the United States for the establishment of governments for the territories that have been acquired. This fact is of importance. The belief has been widespread that the United States, in receiving the acquisitions coming to it in consequence of the war with Spain, had suddenly thrust upon it an entirely new problem in government with little or no experience of which it might avail itself in seeking its solution. In truth, however, the problem of the government of dependent territory presented itself with the first Union of the States and occurred again and again as

additional territory was acquired. Moreover, throughout this history of more than a century of expansion, and notwithstanding the great variety of conditions that have had to be met, there can be traced a remarkable homogeneity in the action taken by the United States. The same general principles have been followed; so much so, in fact, that in the latest acts for the temporary government of Porto Rico, the Philippines or the Canal Strip there can be found the same provisions, and even the same language, that was used in the acts of fifty, seventy-five or one hundred years ago. The United States thus, in fact, has not only had a wide experience in the practical work of formulating schemes of government for dependent territory, but has invariably availed itself of this experience instead of looking to the practices of other nations. This fact gives to a description of the government of dependent territory by the United States a unity and historical continuity that at once adds to its interest and facilitates its logical consideration. It is for this reason that in the next succeeding chapter the effort has been made to describe the steps taken by the United States for the government of each addition to its territory on the mainland. For it is only through a knowledge of what has been done in each case in the past that one can understand the historical basis that exists for almost all of the provisions that are to be found in the organic acts recently enacted for the government of our new insular possessions. From this account it will be seen that in framing these acts Congress did not indulge in any purely experimental legislation, but, upon the contrary, merely gave

a more extended application to principles and practices that had repeatedly been applied and had undergone the test of experience in the past.

Not only has the United States, in the numerous cases in which it has been called upon to make provision for the administration of dependent territory, organized forms of government which, as regards their fundamental features, have been based upon the same general principles, but it has at the same time, in doing so, acted in accordance with certain clearly defined theories which were adopted at the outset and which, so far as circumstances have permitted, have been consistently followed out. Together these theories constitute the policy of the United States in respect to dependent territory, or what in other countries would be known as its colonial policy. Although, as has been said, the consideration of the colonial problem of the United States as such does not enter within the scope of the present work, nevertheless the main features of this policy should be stated; for it is only by knowing what the purposes that it desires to accomplish are—in a word, the ultimate as well as the immediate end in view—that the action taken for its accomplishment can be properly judged or appreciated.

Without entering into detail, the policy that the United States has held in respect to dependent territory may be said to be based upon, or embrace, the following essential principles: first, the administration of each dependent territory primarily with a view to its own benefit or advancement, and in no way as constituting a field for exploitation in the interest of the mother country; secondly, the conferring upon each

territory the largest measure of self-government that the condition and character of its inhabitants renders feasible; and, finally, the ultimate incorporation of the territory into the United States as a State or States of the Union, coördinate in all respects with those already included, as soon as the conditions prevailing in it sufficiently approximate those in the United States; or, in the case of non-contiguous territory, if after due experience it is demonstrated that a sufficient measure of success has not been achieved in developing among its inhabitants an attachment to those beliefs and principles which underlie the political philosophy of the American people and alone render their institutions workable, or that the inhabitants of such non-contiguous territory do not desire definite incorporation in the Union,—then the grant to them of that measure of autonomy or independence which they are fitted to enjoy, and which conditions render safe. Concerning each of these points a few words of further explanation should be said.

What may be called the exploitation theory in respect to dependent territory, such as has been practiced by certain European nations, has never met with any acceptance in the United States. The one essential justification that has ever been offered for the acquisition of new territory and the holding of it even temporarily in dependence has been that such action has been for the benefit of the territory itself. As the most important consequence of the adoption of this principle the United States has in no case sought to make of dependent territory a source of revenue to the general government. Not even has the effort been

made to impose upon newly acquired territory a part of the cost incurred in bringing about its annexation, though this cost has in cases amounted to hundreds of millions of dollars and has necessitated the imposition of new and heavy taxes upon the people of the United States itself. In the case of the more important insular dependencies, the Philippines and Porto Rico, this liberality of treatment has gone even further and discrimination has been made in their favor. In addition to enjoying all of the ordinary sources of local revenue, they have been given the entire receipts derived from customs duties and excise taxes, which in the States or Territories on the mainland are covered into the Federal treasury. More than this, Porto Rico has been allowed to form and administer its own special system of excise taxes, and the Philippines its own special systems both of excise and customs taxes. The importance of this advantage may be seen when it is stated that over two-thirds of the revenue of Porto Rico is derived from these sources, and the same is probably true of the Philippines. Notwithstanding this surrender of income, the Federal Government at its own expense performs a great variety of important services in the islands, such, for example, as the maintenance of the military and naval establishments, the erection and care of light-houses and buoys, the support of the marine hospital service, weather bureau and agricultural experiment stations, the conducting of investigations and explorations having in view the determination and development of commercial and industrial resources, etc.

The second essential feature of the policy of the

United States in respect to dependent territory is that of entrusting to the people of such territories the management of their own public affairs to the greatest extent that conditions permit. The carrying out of this aim comprehends three kinds of action: first, the immediate endowment of the dependent territory with the largest measure of self-government that the conditions surrounding the acquisition and the character of its inhabitants safely warrant; secondly, the promotion in every feasible way of the education of the people of the territory in the knowledge and principles of government; and, thirdly, the progressive extension of the powers of self-government as success is attained in these educational efforts. It is hardly necessary to comment upon the importance of this feature of the colonial policy of the United States. It goes to the root of the whole policy and constitutes the key by which all of the steps that have been taken by the United States for the administration of dependent territory are to be interpreted. By its adoption the United States has departed radically from both the theory and practice of other nations.

The most important result, from the practical standpoint, of the adoption of this policy lies in the fact that it has made, and is making, the task of the United States a dual problem: that of colonial government proper, and that of the education of the colonists in the art of government. This duality of the colonial problem of the United States should never be lost sight of in any study of the action taken by the United States or in any attempt to judge of the success

achieved. Especially should it be borne in mind when any comparison is made with the methods pursued and results attained by other governments. In consequence of it the task of the United States has been rendered enormously more complicated and delicate. Had the United States merely the single task of giving to each dependency an honest and efficient government the matter would be a comparatively easy one: a simple form of government could be adopted and capable men with adequate powers appointed for its administration. When, however, in addition to this there is sought, as one of the main ends in view, the training in the art of government of a people who, as in the case of the Filipinos and Porto Ricans, have had little experience in the management of public affairs, and to whom the fundamental principle that government should be administered for the benefit of the whole people instead of for those who happen to be in authority, is foreign even in thought—when this is the end sought and this the condition to be met, it is evident that not only is the problem a much more difficult one, but that a radically different policy must be pursued in seeking its solution.

In the first place, the people governed must, in some way, be given a voice in the determination of the policies pursued and a participation in the administration of affairs. There is no other known way that this instruction in the principles and methods of government can be imparted than in the practical school of experience. This means, not only that the system of government that is created must make provision for the representation of the inhabitants of the depen-

dency in some way, but that its actual administration must be had with this end always in view. The spirit in which laws are executed is of an importance equal if not greater than the character of the laws themselves. Thus, to cite an important instance, in very few cases is it feasible to specify by law whether certain offices shall or shall not be filled by natives. This must be left to the discretion of the appointing officer. How this discretion is exercised determines to a large extent whether the administration is in reality a liberal one, in the sense of giving a large measure of participation in public affairs to natives of the country, or the reverse. Again, everything depends upon the manner in which are exercised those powers of supervision and control over local bodies which are necessarily vested in the central government in order that extreme cases of misconduct may be corrected. They may be administered in such a way as to constitute a valuable means of educating and instructing the local officials in the art of government and administration, by pointing out errors, encouraging higher ideals, etc., or in such a way as practically to destroy the measure of self-government that has apparently been granted in the law.

The granting of this voice in the determination of lines of action, and of the right of participation in the administration of affairs, however, gives rise to the important consequence that thereby the fullest achievement of the first aim of colonial government—efficient administration—must in a measure be sacrificed. There can be no doubt but that the immediate effect of this attempt on the part of the United States

to accomplish the double object of good government and political education will be that affairs will not be managed as well as if the first object was the only one in view. Business will not be transacted with the same despatch, economy and justice as when only experienced administrators are in control; desirable reforms will be delayed; more or less resistance will be met at every turn when changes are advocated; the difficulty of maintaining a proper budgetary balance will be increased; that bane of government, the use of public office for the attainment of private ends, will more frequently be in evidence; and in a score of ways the workings of the governmental machine will be made more delicate and difficult. The recognition of these difficulties, however, by no means carries with it the conclusion that the policy of the United States is not a wise one. If the people can by this means be trained in the management of public affairs and their political ideals raised, the sacrifices made in the earlier years will be well worth all that they cost.

This matter has been considered at some length because of its great importance from the practical as well as the theoretical standpoint. Without a full appreciation of all of its features the student would utterly fail to understand the reasons for many of the most vital provisions of both the organic laws enacted by Congress for the government of dependent territory and the subsequent action of such territory in the formulation of systems for local administration. Particularly would the action of those entrusted with the conduct of affairs be open to misconstruction. It is

the failure to recognize this ultimate as well as the immediate aim of our colonial policy that has given rise to that phenomenon, which immediately strikes the visitor to one of the insular dependencies, that the American residents seem to so large an extent to be opposed to their own government, or at least critical of its policies and actions. They do not see why the American authorities expend so much patience and effort in trying to get the natives to do or not do certain things which might be carried out immediately by executive action.

The final feature of the policy of the United States that has been specially mentioned relates to the ultimate status that dependent territory should enjoy. It is about this feature that discussion during recent years has chiefly centered. This question arose when it was first seen that the individual States would cede their western territory to the Federal Union and the Continental Congress, by a vote taken on October 10, 1780, definitely declared a policy which was consistently adhered to during the first one hundred years of the expansion of the United States. This policy, to use the language of the vote itself, was that all of the lands ceded should "be settled and formed into distinct republican States which shall become members of the Federal Union." Regarding the wisdom of this policy there was until recent years never any question. Public sentiment was unanimous that it should apply to all territory coming under the sovereignty of the United States and that every effort should be made to hasten the date of its application. During these years, in fact, this policy was held to

furnish the only basis upon which the annexation of new territory could be justified.

With the annexation in 1898 of Porto Rico and the Philippines, however, the people of the United States have been forced again to consider this question. The character of at least a portion of the territory thus acquired is such that the United States is compelled to confront the fact that the prospect of such territory ever becoming of such a nature that it can safely be admitted into the Union as a State or States without detriment to the nation as a whole is so remote that for all practical purposes it can be dismissed from consideration. Willingly or unwillingly, the people of the United States are forced to recognize that by the accession of this territory the nation has come into possession of a territory that for an indefinite time at least will have to be held purely as a dependency.

Attention has already been called to the significance of the political effect, internal as well as external, that has resulted from this fact. As regards the subject immediately under consideration, the important point is that, though the United States has been forced to admit the possibility of owning territory that may not ultimately become a State or States of the Union, it has not been compelled thereby to abandon its historical policy as a general principle. All that has been necessary is the modification of this principle in the single respect that it is not feasible at the present time, as in the past, definitely to determine in advance what shall be the ultimate political status of this territory. So far as any immediate action regarding its administration is concerned, it can proceed, and in

fact has proceeded, practically the same as if no such question had presented itself. The same and even greater efforts have been made to extend to these territories a system of government and laws conforming to those existing in the United States, and to educate their inhabitants in the principles underlying them and to imbue them with the spirit in which they should be administered. If success is achieved in these efforts, it will then be time to determine whether the territory shall be erected into a State of the Union or into a commonwealth enjoying autonomy in some other form. When that decision has to be made there can be little doubt that the wishes of the dependent territory at the time will largely control.

Legal Right of the United States to Acquire and Govern New Territory. But one point further needs to be mentioned in this account of the general phases of the problem of the government of dependent territory by the United States. This is the legal right that the United States has under the Constitution to acquire new territory at all, and the limitations under which it rests in providing for its government and administration. The questions involved in this point have repeatedly been before the federal courts for determination and may now be said to be fairly well settled. The latest, and in some respects the most important, cases in which the question of this power has arisen are those known as the "insular cases," recently decided by the Supreme Court, which arose out of the annexation of Porto Rico and the Philippines. It is quite beyond the scope of the present work to enter

upon any detailed consideration of the questions here involved. The subject has already been exhaustively treated in other places and is, moreover, taken up in the introductory volume of the series of which this work is a part. All that will be necessary here, therefore, will be to state the points that may fairly be said to have been definitely established.

These points, regarding which there can now be no question unless the Supreme Court should at some time in the future reverse itself, are: that the United States possesses power to acquire new territory to the same extent as any other nation; that, as a logical sequence of this power and the express provision of the Constitution that "Congress shall have power to dispose of and make all needful regulations and rules respecting the territory or other property belonging to the United States," the United States has full authority to provide for the government and administration of such territory; that this power to govern new territory is vested exclusively in Congress; that in the exercise of this power Congress is subject to practically no limitations, but may take such action in each case as it deems best; and that neither the Constitution of the United States, except as regards those provisions relating to what may be called the fundamental rights of citizenship, such, for example, as that of liberty of worship, nor the general statutes of the United States, are extended to new territory by the mere fact of its acquisition, but only as they are expressly made applicable by legislative act. All of these points, it will be noted, tend to establish one fundamental principle—the plenary power of Congress to

take such action as it deems best regarding the government, administration and fundamental laws of dependent territory, whether that territory be on the mainland or be an island in the Pacific Ocean, and that in the exercise of this power Congress is under no obligation to adopt any rules of general application, but may modify its action as in its judgment seems wise in order to meet varying conditions. As it was excellently stated in a recent opinion rendered by the judge of the United States Circuit Court of Appeals for California: "The Territories of the United States are entirely subject to the legislative authority of Congress. They are not organized under the Constitution nor subject to its complex distribution of powers of government as the organic law, but are the creation exclusively of the legislative department and subject to its supervision and control. The United States having rightfully acquired the territory and having become the only government which can impose laws upon them have the entire domain and sovereignty, national and municipal, Federal and State. It may legislate in accordance with the special needs of each locality and vary its regulations to meet the circumstances of the people. Whether the subject elsewhere would be a matter of local police regulations within the state control under some other power it is immaterial to consider; in a Territory all of the functions of government are within the legislative jurisdiction of Congress and may be exercised through a local government or directly by such legislation as we have now under consideration."[1]

[1] Endleman, et al., *v.* United States, February 28, 1898.

The importance of this interpretation of the powers of Congress cannot be overestimated. Without such unlimited power it is difficult to see how Congress would have been able properly to meet the different conditions that have existed in the different Territories that have been acquired. It is extremely fortunate, therefore, that the Constitution of the United States has permitted this interpretation.

Government of Dependent Territory by Military Authorities. While Congress thus possesses supreme power in respect to dependent territory, it should be noted that where territory has been acquired as the result of military operations and occupations, full powers of government, civil as well as military, may be exercised by the military authorities until such time as Congress sees fit to exercise its own prerogative. This power on the part of the military authorities exists in virtue of the general powers vested in the President of the United States as commander-in-chief of the United States military forces. The action taken by the commander in the field is, thus, legally that of the President acting through the war department. This power that thus exists of organizing and carrying on a purely military government for a considerable period of time, even after all hostilities have ceased, has given rise to one of the most interesting phases of the history of the government of dependent territory by the United States. As the exercise of this power has been of special importance in the work of re-organizing the governments of our newly acquired insular possessions, it is desirable that some few words should be said re-

garding its peculiar character, and especially regarding the relative advantages and disadvantages that it presents as contrasted with those of civil government.

The great advantage of a military government lies in the absolute power that is vested in the military commander to take such action as he deems best without being hampered by the necessity of obtaining the consent of any other body or authority. By the mere promulgation of a general order he can nullify existing laws, amend them, or create new laws to take their place. The period of military rule can thus be very profitably employed in making those changes which are absolutely essential in order to accomplish the transition from the old to the new system of government, but which are certain to be antagonized by the persons affected. Thus, for example, where the people are indifferent to, or even opposed to, necessary sanitary measures and cannot be made to authorize such measures themselves, the military authorities can, regardless of such indifference, insure their accomplishment. Or, again, there may be certain public services which under the old régime were entrusted to the local authorities and were very inefficiently performed which in the interest of economy and efficiency should be placed under the direct control of the central government. Under any civil government in which the people possess a large share in the management of their own affairs it is often impossible to secure such a transfer. All such questions can most easily be solved by a military government where nothing more is needed than the fiat of the commander.

It is hardly necessary to comment upon the advan-

tages that this method of managing public affairs presents under circumstances such as existed in the Philippines upon their first acquisition. There was there presented the exceedingly difficult task of changing from one system of government to another based upon entirely different principles. Such a change, no matter how desirable it might be, could not possibly have been made without encountering a great deal of opposition on the part of certain classes of the population affected. Not only were the people accustomed to the old régime, but it was impossible for them at once to understand or appreciate the advantages of the new system, or the real object that was sought to be attained by making the change. It may safely be said that it would have been an almost hopeless task to have effected this transformation without a tremendous amount of friction and intolerable delay had it been necessary to work through the ordinary machinery of civil government. Action of the military authorities may, thus, be likened to a surgical operation. Although apparently radical and arbitrary, and even at times carrying with it a certain element of hardship, it yet in many cases means a more speedy recovery and ultimate benefit to the general public. Had, therefore, the Philippines come to us through voluntary cession by Spain, without the intervention in any way of the military forces, it is difficult to see how the government of these islands could have been brought under the general system of American administration except after generations of effort.

Notwithstanding these manifest advantages enjoyed by a military government, there are certain disadvan-

tages inherent in that form of administration which render it desirable that it should be discontinued at the earliest possible moment, and a complete form of civil government substituted in its place. A population naturally chafes under such an autocratic régime, and constant friction results. More important still, the moral effect is bad where, as in the case of the United States, the essential aim is to develop a spirit of self-reliance and ability on the part of the people governed to manage their affairs, and to make them satisfied with the new sovereignty under which they have been brought. Rightly or wrongly, a people whose affairs are being administered in an arbitrary way will believe that such administration is conducted without regard to their rights. Military officers, moreover, are by their very training unfitted in a way to appreciate the feelings of the people being governed, and unwittingly look upon them in the nature of a subject people who are to be governed rather than to be educated in the art of government. Even if the superior officers appreciate the delicate nature of their task, their subordinates will not always fully do so. For these reasons the United States, as will be seen, has at the earliest possible moment taken the action necessary for the substitution of civil for military authority in all territory acquired by military operations.

CHAPTER II

GOVERNMENT OF EARLY ACQUISITIONS ON THE MAINLAND

Northwest and Southwest Territories. The problem of the government of territory not comprehended within the boundaries of an individual State but belonging to the nation as a whole first arose through the cession to the Federal Government by the original thirteen States of lands stretching to the westward as far as the Mississippi River, the possession of which was conferred upon them by the treaty of 1783. This cession by the different States took place during the years from 1781 to 1802. The territory thus transferred to the Federal Government was from the start divided into two large areas: the one lying north and the other south of the Ohio River and both having for their western boundary the Mississippi River. They were designated, respectively, as "The territory of the United States northwest of the River Ohio" and "The territory of the United States south of the River Ohio," but were usually known simply as "The Northwest Territory" and "The Southwest Territory."

Before these cessions were completed the Continental Congress addressed itself to the question of their government. In 1783 it appointed a committee, of which Thomas Jefferson was chairman, to report a plan for

fixing the relations between the territory ceded and to be ceded and the Confederation and for providing a scheme of government for it. On April 23, 1784, the day that Virginia made its cession, Mr. Jefferson reported on behalf of this committee a scheme of government which was known as "Jefferson's Ordinance" or "Ordinance of 1784." The plan thus proposed did not meet the approval of Congress in all respects and was discussed for several years. Final agreement was reached on July 3, 1787, on which day was adopted the famous "Northwest Ordinance" or "Ordinance for the Government of the Territory of the United States Northwest of the River Ohio." This ordinance has rightly been deemed to be one of the great historical documents of the United States. Next to the Constitution itself, it is the most important organic act of the Federal Government. It may be said to embrace provisions having three distinct purposes in view: first, a solemn grant to the inhabitants of the territory of those fundamental political and personal rights which are deemed to lie at the basis of American liberty; second, the formulation of a plan for the immediate government of the territory; and, third, a statement of the general attitude of the Federal Government toward, and its policy in respect to, the ultimate status of such territory.

A consideration of the provisions relating to the first purpose does not fall within the scope of the present work. In regard to them the only point that should be noted is that Congress in this document definitely took the position that the rights enumerated were not enjoyed by the inhabitants of the territory

because of the mere fact that the territory was under the sovereignty of the United States, or that such rights were contained in the articles of confederation; but that it was necessary that they should be conferred upon them by express grant through legislative act. The correctness of this position, it need hardly be said, has been affirmed by the Supreme Court of the United States. It is with the second and third purposes of the ordinance that we are here primarily concerned. It is important to give the provisions relating to these subjects with some particularity, as they constitute a precedent that has been closely followed in subsequent action, many of the more essential sections having been reproduced almost unchanged in practically every act that has been passed for the government of dependent territory, whether that dependent territory has been situated on the mainland adjacent to existing States or in distant seas.

Two schemes of government were provided for by the ordinance: the one to go into effect immediately, and the other to be substituted for it as soon as certain conditions were fulfilled. For the immediate government of the territory a very simple form of government was provided: all governmental powers were vested in a governor, a secretary, and a court to consist of three judges, all to be appointed by Congress.[1] The term of office of the governor was fixed at three

[1] By an amendment adopted August 7, 1787, it was provided that these appointments should be made by the President of the United States, by and with the advice and consent of the Senate, in order that the provisions of the Constitution, subsequently adopted, relative to appointments might be complied with.

years, that of the secretary at four years, and that of the judges during good behavior. A property qualification was required in the case of each of these officers: that of the governor being that he should have a freehold estate within the territory of at least one thousand acres of land, and that of the secretary and each of the judges that he should have a similar estate of not less than five hundred acres. Executive power was vested in the governor, and judicial power in the court. The provisions regarding the exercise of the legislative power were rather unusual. No provision for a legislature proper was made, the ordinance merely providing that the governor and the judges, or a majority of them, might adopt and promulgate within the territory such laws of the original States, criminal and civil, as they deemed to be necessary and best suited to the circumstances of the territory. Action by them in this direction had to be reported to Congress, but continued in full force and effect unless disapproved of by that body.

These provisions regarding the immediate government of the territory were not intended to continue in force for any length of time, but were to be supplanted by a second and more complete scheme of government as soon as there were five thousand free male inhabitants of full age in the district. The essential particular in which this more permanent form of government differed from that of the first was in respect to the legislative power. It was provided that as soon as the conditions regarding population above noted were met a legislature should be constituted in the following manner. A house of representatives, consist-

ing of one representative for every five hundred free male inhabitants until the number amounted to twenty-five (after which the number and proportion of representatives should be determined by the legislature itself), should be elected by the qualified voters of the territory. The electoral franchise for this purpose was restricted to persons who either had a freehold of at least fifty acres in the district and had been citizens of one of the States and were residents within the district or had a freehold of at least fifty acres in the district and had been residents therein for at least two years. Power to act as a representative was restricted to persons who had been citizens of one of the States for three years and who were residents of the district, or had resided therein for at least three years and owned in their own right in fee simple not less than two hundred acres of land within the district. The term of office of representatives was fixed at two years. This body as soon as elected was directed to meet and nominate ten persons residing in the district and each possessing a freehold-estate of not less than five hundred acres of land, the names of whom should be transmitted to Congress. From these ten, Congress, or the President of the United States, as it was afterward provided, was to select and commission five, who together should constitute an upper house of the legislature, or "council," as it was designated. The term of office of members of the legislative council was fixed at five years and new councils were thereafter to be selected in the same manner. To these two houses and the governor was given all legislative power. The usual provision was made that all bills before becom-

ing acts should be passed by a majority of each house and receive the approval of the governor. There was, however, no provision regarding the passage of an act over the veto of the governor or where the approval of that officer was withheld. The governor was given the power to convene, prorogue or dissolve the general assembly whenever in his opinion it was expedient.

The foregoing provisions had reference only to the government of the district itself. In order that the district might have some participation in the administration of the general affairs of the nation, provision was made for the election by the two houses in joint assembly of a delegate to Congress, who should have a seat in that body with the right of participating in debate but not of voting. There was thus established the principle of a qualified representation in Congress through the device of a territorial delegate which has been consistently followed out by the United States throughout the history of its treatment of dependent territory to which a measure of self-government has been granted.

As regards the third object of the ordinance—the ultimate status of the territory—the act contained the explicit provision that the territory should in time be divided into districts which should be admitted into the Union as States on an equal footing with the original States. The precise provisions regarding this point were that there should be formed in the territory not less than three nor more than five States, that any one of these districts should be admitted as a State with full powers as soon as it included sixty thousand free inhabitants, and that at the time of such admission it

should have the liberty of itself forming a permanent constitution and state government subject only to the limitation that such constitution and government should be republican and conform to the principles contained in the ordinance. By a supplementary clause it was provided that such admission might be allowed at an earlier period when the number of free inhabitants in the district was less than sixty thousand if such action was not inconsistent with the general interests of the Union.

The importance of the Northwest Ordinance does not lie in the fact that by it an intricate or detailed system of government was worked out, but rather that in it certain fundamental principles were put into operation which have had a profound influence upon subsequent action. As has been seen, the ordinance itself entered to a very slight extent into detail, merely stating in what bodies the various governmental powers should be vested. From the standpoint of government the important features of the ordinance may thus be summarized: first, the failure, in respect to the immediate government at least, to provide for a complete separation of legislative, executive and judicial powers; second, the provision of an appointed executive, the power of appointment being vested first in Congress and later in the President of the United States; third, the provision that the upper house of the legislature should consist of persons holding their office through appointment from the Federal Government; fourth, the adoption of the device for a qualified representation of the district in Congress through the election by the voters of the district of a delegate

to Congress with power to sit in that body and participate in debate but not to vote; fifth, the grant to the district itself of the power to enact laws for the administration of its own internal affairs subject only to the power of Congress either to nullify such legislation or on its own initiative to enact legislation relative to the district; and, sixth, the provision that as soon as circumstances permitted the district should be admitted into the Union as a State and be given the power to frame its own constitution, which should be republican in form and not in conflict with organic law.

The Northwest Ordinance was but the first of a long series of acts by Congress having for their purpose to make provision for the government of the various political divisions into which the Northwest and other territory coming under the jurisdiction of the United States was divided. It is much the most important, however, for it furnished the model upon which subsequent legislation was based. On May 26, 1790, an act was passed providing that the Southwest Territory should have a form of government in all respects similar to that provided by the Northwest Ordinance. The work of dividing up these two territories into smaller divisions with separate governments began almost immediately. Without attempting to follow every change made, some of the more important steps by which this was accomplished may be given: Kentucky, which was only nominally within the boundaries of the Southwest Territory, was admitted as a State in 1792; Tennessee, likewise a part of the Southwest Territory, was admitted in 1796. On May 7, 1800,

the Northwest Territory was for the first time divided, an act of that date dividing this territory into two districts designated, respectively, as "Indiana Territory" and "Territory Northwest of the River Ohio," and providing that each should have the same form of government as that provided by the Northwest Ordinance. In 1802 the greater part of the latter territory was admitted into the Union as the State of Ohio, the remainder, or northern part, being attached to Indiana Territory. This latter territory was in 1805 again divided, through the erection of the northeastern part, into the Territory of Michigan. In 1809 a still further division took place, the southeastern part being designated by the old name of "Indiana Territory" and the western part being renamed the "Territory of Illinois." All of these territories were by the acts providing for their erection given the same form of government as that provided for in the Northwest Ordinance. The Territory of Illinois was subsequently divided into three Territories, which were admitted into the Union as the States of Illinois, Michigan and Wisconsin. The Southwestern Territory underwent a similar splitting-up, though there a somewhat greater readjustment of the boundaries took place in consequence of the fact that the formal cession of her lands to the Union by Georgia was not made until 1802.

Louisiana Purchase. In 1803 came the first great step in the expansion of the original territory of the United States. The vast territory known as the "Louisiana Purchase" was acquired by purchase from France for

fifteen millions of dollars in accordance with the Treaty of Paris of that year. Although the treaty was negotiated on April 30, it was not finally ratified by Congress until October 28, following, the resolution of that date to carry it into effect only being passed after much opposition on the part of those who believed that the acquisition of the territory was unwise. The problem of providing for the government of this new acquisition presented features quite different from those which had confronted Congress in the case of the Northwest or Southwest Territories. These new features arose through the fact that the territory acquired, or a portion of it at least, was already in the enjoyment of an established government and that the inhabitants had become accustomed to other forms of political institutions and systems of law. The problem was, thus, to a certain extent one of changing a form of government rather than the creation of a government *de novo*. The act providing for its immediate government was passed October 31, 1803, and is of peculiar interest, as its provisions have been followed almost verbatim in practically all subsequent action for the first government of territory that has been acquired by the United States through cession from other nations. This act was not intended to establish a permanent form of government for the territory acquired, but merely to make provision for its administration pending the time when such action should be had. Its essential provisions thus read: "That until the expiration of the present session of Congress, unless provision for the temporary government of said territory be sooner made by Congress, all of the military,

civil and judicial powers exercised by the officers of the existing government of the same shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property and religion."

The interesting feature of the provision thus made for the immediate government of the Territory of Louisiana, and later for the immediate government of other territory as acquired, lies in the fact that Congress recognized that it was not in possession of that knowledge of the conditions which was necessary to enable it to act intelligently in the elaboration of a complete scheme of government, and that until such information could be acquired the whole matter of the government of the territory should be vested in the executive branch of the government, with full power not only to take immediate action but to modify that action as necessity might arise.

Although this act was intended to be but temporary, it nevertheless gave rise to intense dissatisfaction on the part of the inhabitants of the territory itself, it being claimed by them that an essential provision of the treaty of cession had been violated. The provision referred to was "that the inhabitants of the ceded territory shall be incorporated into the Union of the United States and admitted as soon as possible according to the principles of the Federal Constitution to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and in the meantime they shall be maintained and protected in

the free enjoyment of their liberty, property and the religion they profess.'' Had the act been intended to fix the definite status of the territory there would have been good ground for this dissatisfaction. A fair reading of the clause, however, would seem to bear out the action taken, as it was distinctly stated that the territory should only be incorporated into the Union ''as soon as possible.''

At any rate, Congress immediately made efforts to meet, in part at least, the wishes of the territory, and, in the two years following the cession, passed three acts having for their purpose the provision of a more liberal form of government for it. The first of these acts was passed March 26, 1804, and divided the territory into two districts: one of which corresponded practically with the present boundaries of the State of Louisiana, and the other included all of the remaining portion of the cession lying to the north. These two divisions were designated, respectively, as ''Territory of Orleans'' and ''Territory of Louisiana.'' This division of the cession into two districts or Territories was made in consequence of the fact that the northern portion was very thinly settled and comparatively little developed, while the southern portion contained a considerable population and was, consequently, more fitted for a liberal form of government. It will be noted that in the naming of these two divisions the designation of ''territory'' was applied to one and that of ''district'' to the other. This distinction was made upon the general theory that newly acquired and sparsely settled territory should first constitute a district and then as it devel-

oped pass into the territorial stage before being finally admitted as a State or States into the Union. This gradual conferring of full political rights and privileges, however, has not by any means been always followed, some districts having been immediately admitted as States without having passed through the territorial stage.

Turning now to the new forms of government erected for the two political divisions into which the Louisiana cession was divided, attention may first be directed to that for the Territory of Orleans. In this Territory executive power was vested in a governor appointed by the President of the United States, by and with the advice and consent of the Senate, for a term of three years. Such governor might or might not be a resident of the Territory at the time of his appointment, but was required to reside within the Territory during his incumbency of office. Provision was likewise made for a secretary, to be appointed by the President for four years, whose duties included, in addition to those usually pertaining to the office of secretary of a commonwealth, that of acting as governor whenever that office should be vacant for any reason. Legislative power was vested in the governor and a legislative council, the latter consisting of, to quote the language of the act, "thirteen of the most fit and discreet persons of the Territory appointed annually by the President of the United States from persons holding real estate in the Territory." For the exercise of the judicial power, provision was made for the establishment in the Territory of an United States district court, with a district attorney and marshal,

and a superior territorial court and such inferior courts and justices of the peace as the legislature of the Territory might from time to time establish. The judges, district attorneys, marshals and all general officers of the militia were to be appointed by the President of the United States.

There are a number of features about the system of government thus established that are of more than usual interest. Chief among these is that in relation to the constitution of the body by which the powers of legislation should be exercised and the manner in which this function should be performed. In the first place, it will be noted, the legislature was made to consist exclusively of persons appointed by the President of the United States; secondly, instead of provision being made for two houses of the legislature, the act provided for only one house, but conferred upon the governor practically the function of acting as a second house. The precise provisions regarding this matter are interesting, as by them the governor is made to participate in legislative work in a rather unusual manner. The act thus provided that "the governor by and with the advice and consent of the legislative council, or a majority of them, shall have power to alter, modify or repeal the laws which may be in force at the commencement of this act. Their legislative power shall also extend to all rightful subjects of legislation, but no law shall be valid which is inconsistent with the Constitution and laws of the United States or which shall lay any person under restraint, burthen or disability on account of any religious opinions, professions or worship." As is well known,

the usual manner in which a governor participates in legislation is through the power conferred upon him to approve or disapprove of the acts passed by the legislature proper. From the provision of the act which has just been quoted, however, it will be seen that the act contemplated that the initiative in the preparation and enactment of laws should rest primarily with the governor and that the function of the legislative council should be merely that of a body whose consent was required in order that the legislation framed by the governor should be valid. The legislative rôles of the governor and the legislature may thus be said to have been quite reversed. The governor was also given the power to convene and prorogue the legislative council whenever he deemed fit. It is unnecessary to point out that in consequence of these provisions almost supreme power and authority was conferred upon the governor in respect to all matters of legislation as well as those in respect to purely executive or administrative acts.

But few words need be said regarding the form of government provided for the district of Louisiana. To this part of the original Louisiana Purchase there was given scarcely a vestige of self-government. The government of the district, in fact, was vested in the government of Indiana Territory, the act providing that the executive power in the district should be exercised by the governor of Indiana Territory, and that the governor and the judges of that Territory should have the power to make all laws which they deemed conducive to the good government of the in-

habitants of the district of Louisiana; provided, of course, such laws were not inconsistent with the Constitution and laws of the United States and did not interfere with liberty of worship, and to establish such inferior courts as they deemed necessary and prescribe their duties and jurisdiction.

This act of March 26, 1804, as has been said, was confessedly but a makeshift to meet immediate necessities. The act itself, in fact, provided that its provisions should continue in effect only during the term of one year and the end of the next session of Congress occurring thereafter. Less than a year afterwards, therefore, or on March 2 and March 3, 1805, there were passed two acts: one providing for a new form of government for the Territory of Orleans, and the other making similar provision in regard to the government of the district of Louisiana. The former of these acts provided that there should be established in the Territory of Orleans a government in all respects similar to that which had been established for the Mississippi Territory, except as expressly modified in a few particulars by the act, which form of government was in turn similar to that which had been provided for the Northwest Territory except that the article relating to the prohibition of slavery was omitted. It will thus be seen that the ordinance for the government of the Northwest Territory was made the model for the government of the first territory erected out of the domain coming to the United States through the Louisiana Purchase. Although the Northwest Ordinance was thus used as a model, the act of March 2, 1805, as has been said, specified a few particulars in which it should

be departed from. These particulars are not of any great interest, but consisted chiefly in describing in more detail the manner of the constitution of the general assembly and its powers and duties. It was thus provided that the general assembly should meet at least once in each year, on the first Monday in December, unless a different day was appointed by law, and that neither the legislative assembly nor the legislative council should adjourn for more than three days nor to any other place for holding its sessions without the consent of the other. It was also provided that as soon as the Territory had sixty thousand inhabitants it should have the right to organize a convention and adopt a constitution, and, upon the proper exercise of this privilege, should be admitted into the Union upon the same footing as the original States. These conditions were in a few years met, and the Territory of Orleans was admitted as a State under the name of Louisiana by an act passed April 8, 1812.

The Act of March 3, 1805, relating to the government of the district of Louisiana provided that this district should have the same form of government as that first given to the Northwest Territory with this important difference. In the case of the Northwest Territory the governor and judges had only the modified legislative power of adopting and promulgating such laws of the original States as they deemed advisable; in the case of the district of Louisiana this limitation did not appear, the governor and the judges being given the power "to establish inferior courts in the said territory and prescribe their jurisdiction and duties, and to make all laws which they may deem

conducive to the good government of the inhabitants thereof."

This form of government for the Territory of Louisiana continued unchanged until 1812, when a new act, under date of June 4, of that year, was passed for its government. This act changed the name of the territory from that of "Louisiana" to that of "Missouri," as the name "Louisiana" had been appropriated by the Territory of Orleans when it was admitted as a State in the same year. By this act the Territory of Missouri was given a form of government similar in almost all respects to that granted by the Northwest Ordinance to the Northwest Territory as soon as it had a population of five thousand free male inhabitants. Provision was thus made for a governor and a secretary, appointed by the President, and a general assembly consisting of the governor, a legislative council consisting of nine members, appointed by the President for a term of five years from eighteen members nominated by the lower house of the Territory, and a house of representatives elected by the qualified voters. The important departure from the model of the Northwest Ordinance consisted in the broadening to some extent of the electoral franchise, the right of voting being conferred upon all free white male citizens of the United States who were twenty-one years of age, had resided in the Territory for one year next preceding the election, and were taxpayers. The payment of taxes was thus made a qualification of the electors in lieu of the possession of real-estate, as had been provided in the Northwest Ordinance. Minor changes consisted in the provisions

that the general assembly should meet once in each year, that the governor should have the power to convene it in extraordinary session, and that each of the two houses should have the power to choose their speakers and other officers and determine their rules of procedure.

Florida. The acquisition of Florida from Spain in 1819 constituted the next acquisition of new territory by the United States. This territory was acquired by purchase, in accordance with the terms of a treaty executed at Washington, February 22, 1819. On March 3, following, Congress directed the President to take possession of the territory and make provision for its administration. The terms of this act in respect to the organization of a government within the territory were practically identical with those contained in the act authorizing the occupation and administration of the Louisiana Purchase. By them it was provided that all military, civil and judicial powers exercised by the officers of the existing government should be vested in such person and persons and be exercised in such manner as the President of the United States might direct. Florida was administered under the terms of this act for only a short time. By Act of March 30, 1822, it was given a territorial form of government similar to that conferred upon the Territory of Orleans by the Act of March 26, 1804. The most important feature of this latter act, it will be remembered, was that vesting the legislative power in the governor and a legislative council consisting of thirteen of the most fit and discreet persons in the territory appointed

by the President of the United States. A slight departure from the act relative to the Territory of Orleans was made in dropping the provision that such members should be owners of real-estate within the Territory. The government of the Territory of Florida underwent about the same process of gradual modification as took place in respect to the government of the Northwest Territory and Louisiana Purchase, until its final admission into the Union as a State on March 3, 1845.

Oregon. No new addition to the territory of the United States occurred for a period of twenty-seven years. What was known as the "Oregon Country" had at an early date been entered and partly settled by immigrants from the United States and, in consequence, a claim to it had been made by the United States. This claim was disputed by Great Britain, and for twenty-eight years, or from 1818 to 1846, the territory was occupied by that power and the United States, neither making any especial provision for its government and administration. In 1846 all disputes relative to the territory were adjusted by a treaty, by which the present boundary between the United States and Canada was fixed. It was, however, not until two years later that Congress made any provision for the government of the part that had been confirmed to it. By act of August 14, 1848, the whole district was erected into a territory with a form of government similar to that of the Territories of Wisconsin and Iowa, which was the most liberal form of government that up to that time had been granted to any Territory.

Territory Acquired from Mexico. The final rounding out of the boundaries of the United States proper was accomplished by the annexation of the large territory constituting the southwestern portion of the present United States, which formerly belonged to Mexico. Texas achieved its independence from Mexico in 1835 and was recognized by the United States in 1837. After a brief existence as an independent republic it was admitted into the Union as a State by Act of December 29, 1845. Texas, thus, never constituted what may be called dependent territory, and its government, therefore, gave rise to no special problems falling within the scope of the present work. In the year following the annexation of Texas, war broke out with Mexico as the direct result of a dispute relative to the true boundary between Texas and that power. Immediately upon the outbreak of hostilities, General Kearney was ordered to take possession of what is now the southwestern part of the United States, the whole of which was then known as New Mexico. This he did, appointed a provisional governor, and then proceeded westward to California for the purpose of conquering that territory as well. Upon arriving there he found that Captain Fremont had already defeated the Mexican forces confronting him and that the Americans had declared themselves independent of Mexico and had elected Fremont as governor. General Kearney refused to recognize the election of Fremont, himself assumed the office of governor in 1847, and declared California a part of the United States. The war between the United States and Mexico came to an end by the

Treaty of Guadaloupe-Hildalgo, signed February 2, 1848, and ratified by the Senate of the United States on March 10, following. By it New Mexico and California were transferred to the United States, Mexico receiving as an indemnity for its loss of territory the sum of eighteen million two hundred and fifty thousand dollars, of which three million two hundred and fifty thousand dollars was for the payment of claims of American citizens against Mexico. The territory thus ceded to the United States was slightly added to by the subsequent purchase from Mexico in 1853 of the "Gadsden Purchase."

Too much repetition and tedious detail would result from an attempt to describe the form of government that was given to each of the individual Territories that have been successively carved out of these various acquisitions. In general, each act providing for the government of a new Territory was based upon prior acts, the modifications introduced being usually only for the purpose of specifying in greater detail the powers of the territorial legislature. One very important innovation in the system of government that has been described, however, should be noted. The act providing for the organization of the Territory of Wisconsin, passed April 20, 1836, for the first time introduced the principle of an elective legislative assembly in respect to both houses. In all cases before this the upper house had been appointed by the President, either directly or from persons nominated by the lower house. The Wisconsin act provided that the legislative assembly should consist of a council of thirteen members with a term of four years, and a house of repre-

sentatives of twenty-six members with a term of service of two years, all to be elected directly by the qualified voters of the Territory. The electoral franchise was at the same time broadened by dropping the requirement regarding the payment of taxes; universal manhood suffrage thus practically resulting. The territorial legislature, however, was given the power to change this provision regarding the suffrage and to determine the qualifications of voters at subsequent elections as it deemed best, provided that the right of suffrage should not be conferred upon any person not a citizen of the United States. Definite provision was also made that all township and county officers except judicial officers, justices of the peace, sheriffs and clerks of the court should be elected. The Wisconsin act may, therefore, be considered as the revised model of the Northwest Ordinance, upon which has been based the form of government given to most, if not all, of the territories that have subsequently been created.

The Oregon act of 1848 may also be specially noted, as it introduced the principle, which was followed in a number of subsequent acts, but afterwards abandoned, of having the members of the upper house, whose term was three years, divided into classes, so that one-third should retire each year. The term of office of the members of the lower house was fixed at one year. For the first time there also appeared the provision limiting the duration of the ordinary sessions of the legislature to sixty days. The Oregon act also represented the growing tendency on the part of Congress to incorporate in the organic acts for the government of Territories special provisions and restric-

tions. The Oregon legislature was thus expressly denied the power of incorporating any banking institution, of borrowing money in the name of the Territory, or of pledging the faith of the people for any loan whatever, directly or indirectly. This tendency to limit the powers of the territorial legislature and to incorporate in the organic act provisions which partake of a legislative rather than a constitutional character from this date became increasingly prominent.

In the foregoing, as has been said, no effort has been made to follow out every step that has been taken in the way of splitting up the territory that has been acquired into smaller geographical divisions, or to trace all the changes that have necessarily been introduced in the forms of government that have been created for the latter. All that has been sought has been to make known the essential character of the policy that has uniformly been pursued by the United States in respect to providing for the government and administration of territory while in a position of dependency. No one can read the history of this action, extending over a period of more than a hundred years, without being impressed with the extent to which a knowledge of it is essential to a correct appreciation of the reasons and motives that have underlain the action that has been taken in recent years for the government of our newly acquired possessions. The historical basis for much of this later action is found in the events which we have just passed in review. Particularly will it be seen that the very provisions of the organic acts for the insular possessions that have received the most

criticism as being violations of the political principles and traditions of the United States, find ample precedent in the systems of government that have been created for dependent territories on the mainland. Instead of being treated more harshly in respect to the grant of political rights and privileges, the insular possessions have, if anything, received a more liberal treatment than has in many cases been accorded to newly acquired territory in the past.

In the first place, our history has made clear that, from the very outset, Congress, notwithstanding its sincere desire to give to the principle of self-government the fullest possible application, has not hesitated to deny the grant of such privilege until it has been satisfied that the inhabitants of the territory in question are fully qualified for its enjoyment. In the second place, Congress has in the same way laid down the principle that all of the rights guaranteed to citizens of the States by the Constitution do not of their own force apply to dependent territory but only as they are expressly extended to it by legislative act. Neither has Congress felt itself under any compulsion to apply in all cases those political principles which lie at the very basis of the American constitutional system, but on the other hand has resolutely refused to do so until it has been satisfied that such action will be for the best interests of the people of both the dependent territory and the nation as a whole. Thus Congress has granted to the same person, the President of the United States, full executive and judicial power to take such action as he may deem best for the government of territory pending definite provision by Con-

gress. Even when Congress itself has created a system of government, the exercise of two or all three of the branches into which governmental powers are divided—legislative, executive and judicial—has been placed in the same hands, thus violating the principle of the separation of powers, which is considered one of the most characteristic features of our constitutional system. So, also, Congress has not hesitated to make provision for an appointive or partly appointive instead of an elective legislature.

CHAPTER III

PRESENT GOVERNMENT OF TERRITORIES

Arizona, New Mexico and Oklahoma. In the preceding historical account of the treatment of dependent territory by the United States, allusion has been made to all of the more important provisions that have been incorporated in organic acts. A description will now be given of the form of government possessed by existing Territories in order that the extent to which these provisions find a place in legislation at present in force may be seen.

In the exercise of its powers over dependent territory, Congress can proceed either by special act having reference to a particular territory, or by general legislation relating to all political divisions having the same status. In the earlier years the former method was almost exclusively employed. As, however, the policy of the United States became more settled there was exhibited an increasing tendency to make use of the latter method. As a condition precedent to action in this way, it was necessary that a distinction should be made between those territories which were fitted for the enjoyment of a large measure of self-government and those which, on account of their recent acquisition or undeveloped character, had not yet reached the position that would make safe the grant to them of this

privilege. There thus arose the distinction between what are known as "organized" and "unorganized" territories. At the present time there are four Territories—Arizona, New Mexico, Oklahoma and Hawaii—enjoying the former, and two territories, Indian Territory and Alaska, the latter status. The system of government of the first three is so nearly identical in character that they can be considered together. The special conditions existing in the others, however, are such as to render it advisable that each should receive separate treatment.

In each of the Territories of Arizona, New Mexico and Oklahoma executive power is vested in a governor appointed by the President of the United States, by and with the advice and approval of the Senate, for a term of four years. He has all of the usual powers of a chief executive: he has general charge of the enforcement of the laws, is commander-in-chief of the militia, grants pardons and reprieves, and remits fines and forfeitures for offenses against the laws of the Territory and respites for offenses against the laws of the United States until the decision of the President can be known, and commissions all officers appointed under the laws of the Territory. He also has power in respect to the approval and disapproval of legislation that will hereafter be noted.

The only other administrative officers for whom provision is made by Congress are a secretary and, in each Territory having an annual output of over one thousand tons of coal, an inspector of mines. The most important function of the secretary is to act as governor in case of the absence, disability or disqualification

of that officer. His other duties are chiefly in connection with the keeping of public records, the compilation and transmission to Congress of copies of all territorial acts, etc. The salaries of the governor and the secretary are fixed at thirty-five hundred and twenty-five hundred dollars per annum, respectively.

For the exercise of the legislative power provision is made for a legislative assembly, composed of two houses, the members of both of which are elected biennially by the qualified voters of the Territory. The upper house, or council, is composed of not more than twelve, and the lower house, or house of representatives, of not more than twenty-four members. For the purpose of electing these members the Territory is divided into twelve council and twenty-four representative districts and the requirement laid down that each member shall be a resident of the district from which he is elected. The electoral franchise is determined in the first instance by the organic act of the Territory, so as to embrace every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens in, and who are actual residents of, the Territory. After the first election, however, the territorial legislature may fix the franchise as it sees fit, subject only to limitations imposed by the Constitution, the usual disqualification of soldiers, sailors, etc. In the same way the legislature may determine the time, place and manner of holding the elections for these and any other elective offices. The compensation of members is fixed at four dollars per day during the sessions and mileage.

The frequency of the meetings of the legislature, the character of its organization, and the manner in which bills may become law are carefully provided for by the revised statutes of the United States. The legislature may meet in regular session only every two years and shall then continue in session not more than sixty days. Extraordinary sessions, however, may be called by the governor after the reasons for the call have been submitted to the President and have received his approval. Each house elects its own presiding officer. There are a number of provisions regarding the organization and powers of the legislature that are evidently inserted in the law in order to prevent possible extravagances. Thus, the number and compensation of all subordinate officers are carefully fixed; no expense for printing during any one session can be incurred in excess of three thousand seven hundred and fifty dollars, nor can the total expenses of any legislature exceed the amount appropriated for that purpose.

The system for the enactment of bills into laws is the same as obtains in most, if not all, of the States. Each bill before becoming law must be passed by a majority of both houses and be sent to the governor for his approval. If approved by him he must sign it; if he disapproves he must return it with a statement of his objections to the house in which it originated. If after reconsideration the bill is again passed by a two-thirds vote of both houses, it becomes a law notwithstanding the governor's disapproval and without his signature. Any bill not returned by the governor within ten days, Sundays excluded, after its presenta-

tion to him becomes a law whether signed by him or not, provided the legislature has not adjourned *sine die* during such period of ten days.

As regards the scope of its authority, the legislature is granted the power to enact laws in respect to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States nor contravening any of the limitations contained in the organic acts of the Territory or general statutes of the United States. There has been a constantly increasing tendency on the part of Congress to add to the number of acts that may not be passed by certain or all territorial legislatures. Among the more important of these limitations now in force are those prohibiting the passage of acts interfering with the primary disposal of the soil, imposing a tax on property of the United States, taxing the property of non-residents higher than that of residents, having a special or local character in respect to any of a large number of enumerated cases, such as divorce, regulating county or township affairs, the assessment and collection of taxes, the punishment of crimes, the granting to any corporation, association or individual of any special or exclusive privilege, immunity or franchise, etc., or generally in any other case where a general law could be made applicable. No special charter to any private corporation can be granted, but a general incorporation law may be enacted. Other limitations upon the power of Territories are those prohibiting the Territories from contracting any debt except for certain purposes, and even then only to the total amount not exceeding a certain percentum of the

assessed value of property in the Territory for purposes of taxation.

Generally speaking, the Territories may take such action as they think proper relative to the organization and administration of local governments. This they may do either by general act or special acts, creating and conferring particular corporate power upon cities, towns or other municipal corporations. The most important limitation upon the power of any such local subdivision is that they may not incur indebtedness in excess of four per cent. of the assessed value of property within their boundaries. As an exception to this, however, chartered municipal corporations having a population of one thousand persons or over may issue bonds for sanitary and health purposes, the construction of sewers, waterworks, and the improvement of streets, provided that the proposition is endorsed at a special election held for that purpose by two-thirds of the voters owning real or personal property subject to taxation in the municipality. The bonds must not bear more than six per cent. interest and must be sold at par or above, and a sinking fund for their redemption must be provided.

For the administration of justice provision is made for a system of courts. Thus, in Arizona, four district courts and such inferior courts as the legislature may deem necessary are provided. The Supreme Court consists of a chief justice and two associate justices, each of whom also acts as the justice of one of the district courts. They, together with the United States district attorney, who has charge of the legal interests of the United States, and the marshal, are

appointed by the President, by and with the advice and consent of the Senate, for a term of four years. Justices of the peace must be elected by the voters of the Territory in such manner as its legislature may provide. The district courts are given the same jurisdiction in all cases coming under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States. Appeals from the decisions of the district courts to the Supreme Court of the Territory may be made as provided for by territorial act and from the latter court to the Supreme Court of the United States under the same regulations as appeals from the circuit courts of the United States.

As the final feature of the scheme of territorial government, each Territory is given a measure of representation in national affairs through the right to elect every two years a delegate to the United States House of Representatives, who has a right to a seat in that body with the power to serve on committees, engage in debate and exercise all of the other functions of a representative except that of voting.

From the foregoing it will be seen that the system of government that has been provided by Congress for the existing Territories presents, in so far as many of its features are concerned, a very close approximation to that which has voluntarily been created by most of the States for their own government. Provision is made for the same political officers or bodies; there is the same separation of the executive, legislative and judicial functions; and, as regards purely internal affairs, each of these three branches has practically the

same powers as exist in the States. The only essential particulars in which the governments of the organized Territories depart from those of the States are in the manner in which they are represented in the national legislature, their possession of an appointed instead of an elected executive, the limitation of their powers to those expressly granted by Congress, and their subjection at all times to the paramount will of that body.

Hawaii. Though the Hawaiian Islands now constitute a fully organized territory of the United States and are thus subject to all of the general provisions of the law concerning other organized territories, their government and administration possess special interest on account of the manner in which they were acquired, the character of their population, and the fact that they constitute the first example of the extension of the American system of government to a distant territory inhabited by a people largely alien in blood and accustomed to totally different political institutions. Peculiar interest therefore attaches to the action here taken and to the results that have followed. These results have not in every respect been satisfactory, and this fact has undoubtedly influenced Congress in its subsequent task of framing systems of government for the territory acquired as the result of the war with Spain. The experience here gained has enabled that body to take precautions against difficulties in a number of respects which probably would not otherwise have been foreseen.

The Hawaiian Islands. The Hawaiian Islands constitute a group of several islands in the mid-Pacific having a total area of 6,449 square miles. According to the United States Census of 1900, their total population was 154,001, or, deducting 274 persons in the military and naval service of the United States, 153,727. The latter number was made up of 61,122 Chinese, 25,742 Japanese, 29,834 Hawaiians, 7,835 part Hawaiians, 28,533 Americans, 407 South Sea Islanders, and 254 Negroes. Americans began to settle in the islands in considerable numbers in the first half of the nineteenth century, and as their numbers and interests in the islands increased the United States Government manifested a corresponding increase of interest in the progress of events there. This interest soon led to actual intervention, until in 1851 a protectorate over the islands was virtually assumed by the United States. Thus, in that year Webster, then secretary of state, in a formal communication promised that: "The Navy Department will receive instructions to place and keep the naval armament of the United States in the Pacific Ocean in such a state of strength and preparation as will be required for the preservation of the honor and dignity of the United States and the safety of the government of the Hawaiian Islands." Later, troops were landed by the United States on several occasions, notably in 1874, during the election of a new ruler, and again in 1889, to guard against threatened disorder. In 1893 a successful rebellion broke out against the reigning sovereign, the existing monarchy was overthrown and a republic established. On this occasion marines

were landed from an American war vessel in the harbor of Honolulu at the request of the American minister. The claim was then made that the success of the rebellion was to a considerable extent due to the presence of the American forces. Whatever the facts, there is apparently little doubt that the American minister was in sympathy with the movement. On his own responsibility he pledged the protection of the United States to the new government, and on February 1, 1893, raised the American flag. The commissioners sent to Washington to negotiate a treaty of annexation were favorably received, and on February 15, 1893, President Harrison sent to the Senate a treaty providing for the annexation of the islands and strongly urged its ratification. This treaty was favorably reported on February 17, but before final action could be taken Cleveland was inaugurated President, and on March 9 withdrew the treaty on the ground that an improper part had been taken by the United States in the overthrow of the monarchy. The newly constituted republic, however, was able to maintain its existence, agitation for annexation continued, and in 1897 another treaty of annexation was sent to the Senate by President McKinley, but was never acted upon. Upon the outbreak of hostilities with Spain, in 1898, the possession of these islands became of great value to the United States in the prosecution of naval operations in the East. The proposal of annexation, being again made, was accepted by Congress and the annexation itself was consummated by a joint-resolution approved July 7, 1898.

In the framing of this joint-resolution Congress fol-

lowed the same policy that it had adopted in the cases of the annexation of Louisiana and Florida by providing that: "Until Congress shall provide for the government of such islands, all of the civil, judicial and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned." In addition it made provision for the appointment of a commission of five persons, two of whom at least should be residents of the islands, to recommend to Congress as soon as practicable a scheme for the more permanent government of the islands and such other legislation as should be necessary or proper. This commission duly reported, and on April 30, 1900, there was passed an organic act providing for the government now in force.

This act erected the islands into a fully organized Territory of the United States under the name of "Hawaii," and extended to the new Territory all of the provisions of the Constitution and laws of the United States (except where special exception was made), which were not locally inapplicable. It conferred citizenship in the United States, as well as in the Territory of Hawaii, upon all persons who were citizens of the republic of Hawaii on August 12, 1898, and Hawaiian citizenship upon all citizens of the United States who were residents of Hawaii on August 12, 1898, or who might afterwards take up their residence in the territory for one year.

Turning now to the government proper of the Territory, the first difference to be noted between it and that of the other organized Territories is that provision is made by the organic act itself, not only for a governor and secretary, but for a complete equipment of administrative officers. The governor and secretary are appointed by the President of the United States, by and with the advice and consent of the Senate, for terms of four years, and must be citizens of the Territory. The other administrative officers who are named by the act—the attorney-general, treasurer, commissioner of public lands, superintendent of public works, superintendent of public instruction, surveyor, auditor and deputy-auditor—are nominated and appointed by the governor of the Territory with the advice and consent of the territorial senate. These officers likewise hold office for four years, unless sooner removed by the governor, with the advice and consent of the territorial senate. This last rather unusual requirement, that the consent of the upper house must be obtained before an important officer may be removed by the governor, has in practice given rise to considerable trouble. Certain officials have so seriously misconducted themselves as to make it desirable that they should be immediately dismissed. The legislature not being in session at the time, it has been impossible for the governor to order such dismissal without summoning the senate in special session. Congress has, consequently, been strongly urged to amend the organic act so as to permit of the immediate suspension of any official without the consent of the senate, such suspension to continue until the next regular ses-

sion of the legislature, when it can either be rescinded or be followed up with dismissal.

Legislative power, as in the other organized territories, is vested in a legislature composed of two houses, known as the "Senate" and "House of Representatives." The former of these bodies is composed of fifteen members holding office for four years, so selected that seven and eight members are re-elected every two years. The house of representatives is composed of thirty members elected every second year. For the purpose of electing senators the Territory is divided into four districts, electing four, three, six and two senators, respectively. For the purpose of electing delegates to the house of representatives the territory is divided into six districts, each of which is entitled to either four or six members, according to its importance. Owing to the mixed character of the population, especial care is taken in the organic act to determine the electoral franchise. To enjoy this privilege it is required that a person shall satisfy the following five conditions: (1) be a male citizen of the United States; (2) have resided in the Territory not less than one year preceding and in the representative district in which he offers to register not less than three months preceding the time at which he offers to register; (3) have attained the age of twenty-one years; (4) have duly registered during the prescribed time for registration; and (5) be able to speak, read and write either the English or Hawaiian language. This last provision is of especial importance in view of the large number of Chinese and Japanese in the islands. The number of native Hawaiians has during

recent years shown a tendency to decrease, with the result that political power is being more and more concentrated in the hands of the Americans or English-speaking persons. The qualifications for membership in the upper house are that the member must be thirty years of age and have resided not less than three years in the Hawaiian Islands and be qualified to vote for the senators for the district from which he is elected. To be eligible for election to the lower house members must be not less than twenty-five years of age, have resided in the Hawaiian Islands not less than three years and be qualified to vote for representatives for the districts from which they are elected.

The sessions of the legislature are biennial and are limited to a maximum of sixty days each, exclusive of Sundays and holidays, unless the governor specially extends a session by not more than thirty days. Special or extraordinary sessions may also be summoned by the governor. The powers of the legislature are in general the same as those of other territorial legislatures. Special provisions, however, should be noted: The first is that a majority vote of all of the members of the house and not merely those in attendance at a session is required to pass a bill in either house. A second is that the governor, in addition to having the usual power of veto of a bill as a whole, may veto any special item or items in any bill appropriating money for specific purposes. The legislature, however, has the usual power of over-riding a veto by a two-thirds vote of all of the members of each house. Finally, the act contains the very important provision "that in case of the failure of the legislature to pass

appropriation bills providing for payments of the necessary current expenses of carrying on the government and meeting its legal obligations as the same are provided for by the then existing laws, the governor shall, upon the adjournment of the legislature, call it in extra session for the consideration of appropriation bills, and until the legislature shall have acted the treasurer may with the advice of the governor make such payments, for which purpose the sums appropriated in the last appropriation bills shall be deemed to have been reappropriated. And all legislation and other appropriations made prior to the date when this act shall take effect shall be available to the government of the Territory of Hawaii.'' The purpose of this provision is to provide against the contingency of a deadlock in the legislature or the attempt on the part of that body to coerce the government into complying with its wishes by declining to pass any appropriation bill until its wishes have been met. The wisdom of this provision was soon justified, for the contingency provided against presented itself at the second session of the legislature. The governor was, accordingly, compelled to avail himself of this provision and convene the legislature in extra session for the purpose of passing the necessary appropriation bills for the conduct of the government.

The provisions made for the exercise of judicial powers and a representation of the Territory in Congress through a delegate to the house of representatives do not require any special comment, as they are similar to those contained in other territorial organic acts. Notwithstanding the fact that, with the

exception of the few differences that have been noted, Hawaii was given the same form of government as that granted to other organized Territories, the government that has resulted differs quite materially, both in principle and practice, from that obtaining in the Territories on the mainland. This difference is due to the fact that prior to the annexation of Hawaii the islands had been administered under an exceedingly highly centralized form of government. Both under the monarchy and the temporary republic all governmental functions were concentrated in the hands of the central government with its headquarters at Honolulu. There was not a vestige of local government. Even those acts relating to the most local interests had to emanate from the central authorities. If it was desired to open a street or construct a sewer in any city or town, no matter what its importance, approval had first to be obtained from the authorities in Honolulu, often hundreds of miles distant by sea. There being no local treasury, all such local improvements had to be made out of the general funds, with the result that there was often not even an approximation to equity in the apportionment of burdens so that they would be borne by the persons or districts directly affected. As the organic act, in common with other territorial acts, itself made no provision for local government, this centralized form of government continued unchanged after the Territory was organized.

This condition of affairs naturally gave rise to much complaint and persistent agitation for the decentralization of power through the creation of local govern-

ments. These complaints, together with those relating to other subjects, led to the passage by the United States Senate of a resolution directing its committee on Pacific Islands and Porto Rico to proceed to Hawaii and make a full investigation and report regarding the condition of affairs there existing. This committee made its report on January 1, 1903. In respect to the general character of the government that had been organized under the organic act, the committee reported that it was greatly surprised at the extremely centralized character of the government that it found in operation, and was, accordingly, inclined to criticise the territorial government in not moving more rapidly in the exercise of the power conferred upon it by the organic act to provide a form of county or local government for the islands. It emphatically recommended that such action should be taken:

> "The centralized power of the ancient monarchy exercised by the few," it said, "should not be perpetuated, by tacit consent or otherwise, upon the part of the government of the United States, but should be made to yield as rapidly as possible to a more general distribution among, and a fuller exercise of power by, the many."

In its résumé of recommendations it suggested that in the event of the failure of the local legislature of Hawaii to provide for a proper system of local government, provision for such government should be made directly by Congress.

Influenced undoubtedly by this report the Hawaiian legislature in 1903 directed its attention specially

to this subject and passed April 22, 1903, a so-called "County Act" providing for a complete system of local government. This act was in effect a local government code, as it provided not only for the division of the islands of the territory into counties and subdivisions of counties, known as "districts," and for their government, but also entered into great detail regarding the powers and duties of such local governments. A description of the provisions of this act need not be given, as unfortunately the whole act was almost immediately declared by the courts unconstitutional and void on account of certain of its provisions, which were held to be in conflict with the organic act of the territory. The whole problem of local government in the islands thus remains one for future solution.

Indian Territory. A statement of the action that has been taken by the United States for the government or administration of the Indian Territory must necessarily be based upon a consideration of the general methods that have been adopted by the United States in dealing with those Indians who have not been assimilated into the general body of citizens of the country. The Constitution confers upon Congress the power of regulating the intercourse of the Indians with one another and with other persons and generally of taking such action as may be necessary for their development and control. In exercising this power, Congress has from the start recognized the different Indian tribes as quasi-independent political bodies, and until recently has dealt with them by

treaties in much the same manner as foreign nations. The position now occupied by the Indian tribes is thus that given to them by a long series of treaties negotiated with them by the United States and by appropriate legislation by the latter for carrying out their provisions. The general policy of Congress in negotiating these treaties has been to set aside large areas of public lands for occupation by the different tribes. Within these areas, which are designated "Indian Reservations," the Indians occupying them are allowed to maintain their tribal form of organization and almost complete freedom to manage their own affairs in such manner as they desire, the control of the United States being restricted almost wholly to the making of certain necessary provisions for the administration of justice, the prevention of disorder and the protection of the Indians themselves against unscrupulous whites desiring to trade with them. As long as public land suitable for occupation and settlement was abundant this policy presented no serious drawbacks. As such lands, however, became scarce the pressure upon the government to open up these reservations to settlement became increasingly strong. At the same time public opinion more and more came to the position that this system of having special Indian communities within the country had outlived its usefulness and that efforts should be directed toward its abolition and the substitution in its place of a system by which the Indians should be induced to give up their tribal form of government, consent to the breaking-up of their lands into individual holdings, and assume the rights and duties of ordinary citizenship.

Later efforts of the Federal Government have, therefore, all been in this direction. Especially has the attempt been made to foster the education of the Indians and their training in industrial pursuits so that they may be fitted to cope with the new conditions with which they will have to contend.

Indian Territory is not only much the largest and most important of these Indian reservations, but has a peculiar interest in view of the fact that it is not within the boundaries of any individual State and is likely at no distant date to be erected into an organized territory or be admitted into the Union as a part of Oklahoma when that territory is given the status of statehood. Indian Territory is now occupied by what are known as the five civilized tribes, the Cherokees, Creeks, Chickasaws, Choctaws and Seminoles, who have in great part adopted the habits of civilized life. In the exercise of their power to organize a government of their own they have made provision for a system of government modelled after that of the States: they have a governor and a legislature of two houses elected by the people, a national court, a system of taxes, public schools, etc. The United States in addition has made provision, by an act passed on March 1, 1889, for the establishment of a territorial court. Further provision regarding this court and its jurisdiction was made in the Act of May 2, 1890, organizing the Territory of Oklahoma. While this system of government at first worked with a reasonable degree of success, conditions have constantly become more and more unsatisfactory owing to the steady increase in the number of white persons within

the Territory. Though the whites became six times more numerous than the Indians, they had no voice in the administration of affairs, and it was hardly to be expected that such a situation would be allowed to continue indefinitely. Congress has, accordingly, during the past few years enacted a series of laws all having for their purpose the limitation of the power of self-government originally granted to the five tribes. When possible the acquiescence of the tribes in the change has been obtained, but when this has not been possible the changes have in some cases been made without a literal compliance with prior engagements. The most important step that has been taken with a view to bringing to an end the status of the Indian Territory as a reservation has been that of the passage in 1893 of the act providing for the appointment of what is known as the "Dawes Commission." The chief function of this commission was and has been to seek to secure from the tribes agreements whereby they consent to give up the system of holding the lands of the Territory in common and accept individual allotments in its place. Tentative agreements of this character have been made with all of the tribes, but it will probably be years before the change from one system to the other is fully accomplished. Another important act is that known as the "Curtis Act," passed in 1898, the most important provisions of which are those for the enrollment of the inhabitants of the Territory as citizens preparatory to the expected allotment of lands, for the regulation of town-sites, the incorporation of towns, and the exercise by the President of the United States of a veto

power over acts of the tribal government. The time is clearly in sight, therefore, when the present status of the Indian Territory as an Indian reservation will be done away with and that Territory will become either an organized Territory or a part of some other Territory or State.

Alaska. Alaska is the best, and, if we except the Indian Territory, which has a status of its own, the only example of an unorganized territory now constituting a part of the United States. This great territory was acquired from Russia in 1867 by purchase for seven millions of dollars. At the time of its acquisition but very little was known regarding it, and the belief was general that it consisted of frozen and for the most part uninhabitable land. In consequence of this general opinion that the territory would never be of any very great importance to the United States, its acquisition at the time attracted comparatively little attention or interest on the part of the people at large. Recent events, however, have entirely changed the situation of affairs. The discovery of gold within the territory has brought about a great increase in its white population and this in turn has led to explorations, public and private, on an extensive scale, of the greater part of the country, so that its general characteristics and resources are now vastly better known. From these investigations it has developed that the country not only has rich mineral resources, but also offers opportunities for a considerable development along agricultural, manufacturing and commercial lines. In the increased interest that

is given to all matters relating to the government and administration of dependent territory growing out of the recent annexations of the islands ceded by Spain, Alaska has naturally come in for a share.

More than any other dependent Territory Alaska presents an example of the danger that all dependent Territories run of suffering from neglect on the part of the parent government rather than from the enactment of positively injurious measures. At the outset, so unimportant appeared the administration of this Territory, that no provision was made for its government. In the absence of such action by Congress, Secretary Seward, as Professor Hart has pointed out, was compelled to look around for some legal basis upon which to administer its affairs. This he found in an old act of 1834, which defined the "Indian Territory" as that "part of the United States west of the Mississippi." This Seward said "by a happy elasticity of experience widening as our dominions widen, included the territory ceded by Russia." For seventeen years after its acquisition this district was administered by the executive branch of the government without any express legislation, no regular form of government of its own being provided until 1884. On May 17 of that year there was passed an act, entitled "An act providing for civil government for Alaska," which provided for the appointment of a governor by the President of the United States in whom should be vested practically all of the powers of government except those relating to judicial affairs. In the wording of the act, he was "charged with the interests of the United States that may arise within said

territory.'' Judicial power was vested in a district court presided over by a judge appointed by the President with the civil and criminal jurisdiction of the district and circuit courts of the United States. No provision was made for any special revenue system, but the clerk of the court was directed to collect certain fines, forfeitures and fees. Provision was also made for the appointment by the President of four commissioners, to whom were given the general powers of justices of the peace. As it was necessary for Alaska to have a system of law, the general laws of the State of Oregon were declared to be in force within its boundaries in so far as they were applicable. Finally, certain of the executive departments at Washington were given charge of those interests in the district that more nearly pertained to the scope of their duties. It was thus made the duty of the secretary of the interior to make provision for the education of the children; of the attorney-general to compile and publish laws in force in Alaska and to supervise the administration of justice therein; and of the secretary of the treasury to have charge of the collection of customs and other matters.

Sixteen more years elapsed before any further step was taken to give to Alaska a more complete scheme of civil government than this simple one, by which the administration of all of the affairs of the district, with the exception of those relating to justice, were placed in the hands of a chief executive and of the departments at Washington. On June 6, 1900, Congress enacted a civil code and a code of civil procedure for Alaska. The former of these codes made

some slight changes relative to the government of Alaska, such, for example, as providing for the collection of certain license taxes on manufacturers and dealers, the appointment of notaries public, the creation of the office of surveyor-general, who should also be *ex-officio* secretary, etc. Its most important provision relative to the government of the Territory, however, is that making it possible for settled communities to become incorporated as towns. The conditions under which this can be done are as follows: Any community, having not less than three hundred inhabitants, desiring to become incorporated, must file a petition with the judge of the United States district court presiding over the division within which it is situated, signed by at least sixty bona fide residents of the proposed corporation, setting out the number of its inhabitants, and such other facts as the court may deem necessary for the formation of an intelligent opinion. Upon the receipt of this petition it is the duty of the court to set a time for the hearing of any objections to incorporation that interested parties may desire to present. If satisfied that the public interests of the community will be promoted by incorporation, the court must thereupon provide for an election for the purpose of determining whether the community shall or shall not be incorporated. At this election the people are called upon to express their opinion regarding the question of incorporation and to elect a common council of seven members. If two-thirds of the votes cast are in favor of incorporation, the seven persons receiving the highest number of votes are declared councilmen of the corporation and the com-

munity is given its charter. When thus incorporated the council is given the power to provide rules for its own government, to elect one of its members as president, who is also *ex-officio* mayor; to appoint and remove at its pleasure a clerk, treasurer, and such other officers as it deems necessary for the administration of local affairs; to make rules for subsequent municipal elections, provided that no officer shall be elected for a longer term than one year; to provide by ordinance for necessary street improvements, water supply, police protection, etc., and to impose and collect a poll-tax on electors, a tax on dogs, a general tax on real and personal property of not to exceed one per cent. of its assessed valuation, and such license taxes on business as the council deems reasonable. The act further provides that there shall be elected a school board of three directors to have entire charge of public instruction, and school property, the treasurer of which shall be the treasurer of the corporation, and that fifty per cent. of certain license taxes must be paid by the clerk of the court collecting the same to the treasurer of the town for its use for school purposes.

It will thus be seen that though provision has been made for a system of criminal and civil laws for the district of Alaska and for the organization of local governments no serious attempt has been made to work out a system for its general administration such as is enjoyed by the organized territories.

CHAPTER IV

GOVERNMENT OF PORTO RICO: INSULAR GOVERNMENT

TURNING from the mainland and Hawaii to the territory acquired from Spain in 1898 as the result of the successful war with that country, we leave the field of history and enter upon a consideration of problems now actually confronting the United States. These problems are in every way more complex and difficult than those that have been presented in the case of prior annexations. The reasons for this lie, partly in the physical conditions presented by the new territories—their distant location, tropical climate but illy suited for permanent occupation by American men and women, and novel industrial and economic features—but much more in the fact that these islands, instead of being new and unsettled countries, are already thickly populated by races of foreign blood, speaking a foreign language, and in possession of complete systems of government, administration and laws, the principles underlying which are radically different from those upon which are based American institutions. Instead of an open field offering every facility for the building-up of American communities with American institutions and laws, the United States, in Porto Rico and the Philippines, thus, has to do with countries fully occupied and already completely equipped as regards public institutions.

These conditions in themselves are enough to make the task of the United States one of great difficulty, even were its effort limited to taking things as it finds them and continuing the administration of affairs along the lines to which the islands have for years been accustomed. When, however, instead of doing this the United States has adopted, as the most essential feature of its policy, the transformation of existing institutions, so as to bring them into conformity with those of its own, it is evident that the difficulties of the task are multiplied many fold. The United States has, in fact, assumed the task of demonstrating its ability not only to govern over-sea possessions, but to do so through the application of American principles. It should be noted, moreover, that in all prior annexations the United States, after the comparatively simple problem of devising a form of central government for the new territory had been accomplished, had to concern itself but little with its subsequent administration. In Porto Rico and the Philippines, however, but a beginning has been made when that has been done, the infinitely more difficult task remaining of administering the governments so established, and, through them, of making provision for the reorganization of local governments and the many vital matters connected with the conduct of internal affairs.

Occupation of Island, and Organization of Civil Government. For various reasons a study of the steps that up to the present time have been taken for the government of these dependencies should begin with an account of

what has been done in respect to the island of Porto Rico. Not only are the difficulties that have there had to be met far simpler than those existing in the Philippines, but much greater progress has been made in overcoming them. It is in this island that the United States has made its first essay in the field of the government of a dependency partaking of the essential character of a colony. The policies that have there been adopted and the methods that have there been followed have, therefore, necessarily exerted, and will continue to exert, a great influence upon the management of affairs elsewhere. In many respects the United States in Porto Rico has worked under favorable auspices. It has had to do with but a single island,[1] lying within a few days' sail off the shores of the United States, with an unusually salubrious climate, and occupied by a population fairly homogeneous in character and all speaking the same language. Finally, although acquired by force of arms, American rule has been acquiesced in, and, indeed, received with more or less enthusiasm. Porto Rico is the fourth island in size of the West Indies. It is nearly rectangular in shape, having a length east and west of about one hundred miles and a breadth north and south of thirty-six miles, and has an area of approximately thirty-six hundred square miles. According to the careful census taken under the supervision of the secretary of war, in November, 1899, its popula-

[1] There are several small outlying islands, chief among which are Vieques, Culebra and Mona, but they are of comparatively little importance and in no way complicate the task of government.

tion then numbered 953,243, of whom 589,426 were returned as "White," 304,352 as "Mestizos," 59,390 as "Negroes," and 75 as "Chinese." The most significant feature of these figures is that the United States has to deal with a people in which the whites considerably predominate.

Porto Rico was occupied by the United States' forces under General Miles on July 25, 1898, but full possession was not formally assumed until October 18, 1898. The first government of the island under American auspices was, therefore, that organized by the War Department acting through the general commanding. This régime lasted for a little over eighteen months, being supplanted on May 1, 1900, by a purely civil government created by virtue of an act of Congress approved April 12, 1900. During this period the War Department made little effort to effect any radical reorganization of the machinery of civil government or to make any great changes in the general body of the laws under which the people lived. The Act of April 12, 1900, or, as it is more popularly known, "The Foraker Act," after the name of its author, constitutes the organic act or constitution of the island. It has been slightly amended; once by joint-resolution, approved May 1, 1900, relating chiefly to the conditions under which franchises and privileges shall be granted; and once by an amending act, approved March 2, 1901, relating to certain details of the administration of the courts of the island. Neither of these amendments, however, effected any change in the system of government proper that had been provided by the organic act.

This act is in every respect an important document. It may be said to stand to our new insular possessions in much the same relation as the Northwest Ordinance did to our dependent territory on the mainland. As in the case of that ordinance, Congress, in its passage, had to break new ground, with the certainty that its action would not only affect the territory directly legislated for, but would have great influence upon all future action for the government of other distant territory. Much the most interesting aspect in which this new legislation can be studied, therefore, is that of the extent to which, on the one hand, methods that have found application in the past have been made use of, and, on the other, resort has been had to distinctly new provisions in order to meet the different conditions that have had to be taken into consideration.

Governor and Executive Departments. For the administration of the executive, the organic act provides for the appointment by the President, by and with the advice and consent of the Senate, of a governor and six heads of administrative departments: a secretary, attorney-general, treasurer, auditor, commissioner of the interior, and commissioner of education. All of these officers are appointed for a term of four years and until their successors are appointed and qualify. The governor receives a salary of eight thousand dollars and has, in addition, the use of the executive mansion; the salary of the treasurer is five thousand dollars, and that of the other heads of departments four thousand dollars, per annum. The governor is

given all of the powers usually conferred upon the chief executive of an organized territory, both in respect to the general administration of the laws and of the approval of legislation by the insular legislature. The general duties of the secretary, attorney-general, auditor, commissioner of the interior, and commissioner of education are indicated by their designations. The secretary stands next to the governor and acts in his stead whenever the latter is absent from the island or is unable for any reason to perform the duties of his office. His regular administrative duties consist of the transaction of all business arising between the government and the consuls or other representatives of foreign powers; the care and custody of the official copies of all laws or resolutions passed by the legislative assembly, franchises or concessions granted by the executive council, and charters and by-laws of corporations doing business in the island filed in accordance with the provisions of the general corporation law; and, most important of all, the control and supervision of the administration of affairs other than financial by the municipal authorities. The attorney-general in addition to being the legal adviser of the government has very important administrative functions in connection with the judicial system of the island. The treasurer has charge of the administration of all the financial affairs of the insular government with the exception of those relating to the examination and audit of accounts, which are performed in the office of the auditor. In the hands of the treasurer are thus concentrated the functions usually performed in the several common-

wealths of the United States by a number of different officers, such as the treasurer proper, the assessor of taxes, collector of taxes, commissioner of banks and corporations, etc. The treasurer also, in virtue of the provisions of the general muncipal law, performs important duties in respect to the supervision of the administration of financial affairs by the municipalities of the island. By the terms of this law it is his duty to prescribe and enforce a uniform system for the keeping of books of account, for the deposit of moneys and the making of all disbursements by the municipalities and for the requiring from them of uniform annual and other reports setting forth in detail their financial transactions. When duly authorized by the governor, it is also his duty to examine into the financial operations of any municipality, and, in case any fraud or delinquency is discovered, to report the same to the governor for appropriate action. The most important duties of the commissioner of the interior relate to the execution of all works of public improvement, and especially to the construction of public roads and the care and administration of public lands and buildings of the insular government. A special department of education was created in view of the fact that for years to come the matter of increasing the educational facilities of the island will be an object of especial solicitude to the government.

There are a number of points in connection with the provision that has thus been made for the exercise of the executive power in Porto Rico to which attention should be particularly directed. The first of these is that, unlike the acts for the Territories which pro-

vide merely for a governor and secretary and leave to the government thus provided the responsibility of creating an administrative machinery for the management of public affairs, the Foraker Act makes provision for the organization of departments through which at least all the most important work of government shall be performed. It, moreover, places the selection of the heads of these departments in the hands of the President and thus to a large extent takes the whole control over the manner in which the actual administration of affairs shall be exercised out of the hands of the people of the island itself. In making these appointments the President may select either Americans or Porto Ricans, but up to the present time the former only have been appointed.

In the organization of the several departments the policy has been pursued of making use of Porto Rican employees to the greatest extent possible, and generally of entrusting to the people of the island as large a participation in the conduct of affairs as circumstances will permit. In evidence of this mention should here be made of a recent act of the insular government by which provision was made for the creation of a seventh department, the head of which should be a Porto Rican, to have charge of the important services of public health, charities and corrections. In the enumeration of the duties of the six heads of executive departments appointed by the President the organic act did not specifically entrust the administration of affairs relating to public health, charities or correction to any of these officers. The

insular government, therefore, deemed it within its power to make such provision for the management of these affairs as it saw fit. Under the military government there had been constituted for the care of these duties a superior board of health, a board of charities, and a board of prison control. In the absence in the organic act, as above noted, of any express provision regarding the manner in which these duties should be performed, the organizations thus created by the military government continued in force after the inauguration of civil government in 1900 until its modification was provided for by act of the insular legislature. The first change effected by this body was made by the passage of two acts at the first session of the legislative assembly in 1901 which created the offices of director of charities and director of prisons and transferred to them all of the duties formerly performed by the board of charities and board of prison control, respectively. By the terms of the acts these offices were not placed under the jurisdiction of any of the regular administrative departments, but were placed directly under the supervision and control of the executive council, a body which, as will hereafter be seen, is not only the upper house of the legislature, but has also important functions in respect to the administrative system of the island. The appointment of the director in each case was vested in the governor, subject to the consent and approval of the executive council. That body was also given the duty of fixing the compensation of all employees of the two offices and of approving all regulations made by the directors for the management of

the institutions under their charge. In 1902 the further change was made of taking the office of director of prisons from under the control of the executive council and placing it under the direction of the attorney general, while another act created the office of director of health under the Department of the Interior and provided that the director should *ex-officio* be the chairman of the Board of Health, which was continued in existence, with slightly modified powers.

This organization continued in force until 1904, when was passed the act to which reference has been made by which a special department was created to have charge of all of these services. This act provided for the consolidation of the three offices of director of health, director of charities, and director of prisons into a separate department to be known as Office of Health, Charities and Correction. These offices were not abolished or their functions materially changed, but were merely made bureaus under the new department.

In the creation of this department the insular government had in mind the accomplishment of two objects: one, the concentration into the hands of one responsible official of these three services, which are of a generally similar character and present the same class of questions for action, and, which, from the standpoint of administrative efficiency, can best be managed through one and the same person; and, secondly, the desire to make trial of the advisability of entrusting the administration of at least one branch of public affairs to a Porto Rican. The latter of these

objects was accomplished by the provision that the chief of the new department should be appointed by the governor, by and with the advice and consent of the executive council, from among the members of the executive council who were not already at the head of executive departments. As under the organic act at least five of the eleven members of the council must be natives of Porto Rico, this provision necessitated the appointment of one of the Porto Rican members as long as the six heads of the other departments were Americans. The most important other provision of the act was that whereby the new department was placed under the direct supervision and control of the executive council, that body having been given the duty of approving all rules and regulations formulated by the director of the department for the management of institutions under his charge and of fixing the compensation of all employees. The result of these provisions is to make possible the test under the most favorable conditions of the capacity of a Porto Rican to administer important public services in an equitable and efficient manner. In this respect the act may be looked upon distinctly as a piece of experimental legislation, and its results cannot fail to be influential upon future action in respect to the meeting of the demand of the Porto Ricans that the conduct of affairs be more largely entrusted to their hands.

The second point regarding the organization given to the executive branch of the government is the unusual degree of authority given to each of the heads of the executive departments in the management of

the affairs coming under his jurisdiction. The appointment of all subordinates and the determination of the manner in which the problems of his office shall be worked out lie wholly within his discretion. No provision is made for any control either by the governor of the island or by the authorities at Washington, except such as is contained in the power of removal for cause that is vested in the President. The head of each department, to be sure, is required to make an annual report to the department of the Federal Government most nearly corresponding to his own, but there is no intimation that he is in any way subject to the supervision or orders of that department. This independence on the part of the executive heads is especially apparent in respect to their relations to the governor. As they are not appointed by that officer, and there are no provisions giving to the governor any direct authority over them, they are under no legal obligation to make their action conform to his wishes.

These observations are not made in any way as a criticism of the law, for, while occasion might arise when this lack of central control would cause trouble through the failure of a member of the administration to act in harmony with his colleagues, or to co-operate with the governor in carrying out some essential feature of general policy, such a contingency is exceedingly unlikely; and, on the other hand, it is not at all certain that the attempt to avoid this danger by giving larger powers to the governor or the central government at Washington would not result in even greater danger of friction and unwise action. In prac-

tice, every effort has been made, and will undoubtedly continue to be made, by the heads of the departments to work in harmony with one another and the governor. This effort is facilitated by the practice which has been firmly established of the governor calling together the heads of departments in general conference for the consideration of all important matters affecting the general interests of the island, and of those officials bringing to such conferences all matters concerning which they desire the opinion and judgment of their colleagues.

Finally a few words further should be said regarding the peculiar responsibilities, under the system of government that has been established, of the governor. As the whole theory upon which this system of government is based consists in the location of power partly in the hands of Americans appointed by the President and partly in the hands of the people of the island itself, the greatest skill and tact is necessary in order to maintain this apportionment in its proper balance and to harmonize the aims and desires of the American and Porto Rican members of the government, which unavoidably conflict at many points. Almost the whole responsibility of accomplishing this falls upon the governor. Whether desirable legislation or other action will or will not be had often depends upon the success achieved by the governor in finding a common ground upon which all parties can agree. In the large power possessed by him of making appointments in the insular service, and of removing local officials guilty of misconduct, and of filling the vacancies thus occasioned or resulting from death or

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resignation, the governor yields a very great influence over affairs. In consequence of a custom that was firmly established under the four hundred years of the rule of Spain, every one believing that he has a grievance brings it to the governor for adjustment, and a large part of the time of the governor is taken up in the hearing and settlement of such complaints. In a thousand other ways that it is hardly possible to enumerate the intervention and good offices of this official are demanded. In a word, it is the governor more than any one else who must see that the whole governmental machine with its delicate adjustment of parts works smoothly.

House of Delegates and Executive Council. The character of any government, but especially that of one owing its existence to, or dependent upon, a superior authority, is largely determined by the character of the grant to it of legislative powers and by the constitution of the body through which these powers are exercised. Particularly is this true where, as in Porto Rico, it is desired to lodge these powers partly in the hands of the central government and partly in those of the people governed. In the scheme of government that has been provided by the Foraker Act for Porto Rico this object is accomplished through the provision that all legislative power shall be exercised by a legislative assembly of two houses, one of which shall be composed of persons appointed by the President of the United States and the other of members elected by the qualified voters of the island. These two houses are known as the Executive Council and the House of

Delegates, respectively. The legislature thus constituted forms the central feature of the whole system of government that has been provided for Porto Rico, and is in many respects the most interesting legislative body with which the student of American political institutions has to concern himself. The exact methods by which both of its houses are selected, their respective powers, and the manner in which they perform their functions should, therefore, be given in detail.

The house of delegates constitutes the popular branch of the legislature, and is the body through which the people of Porto Rico exercise a real voice in the administration of their public affairs. It is composed of thirty-five members, elected biennially by the voters of the island. For purposes of election the act prescribes that the island shall be divided into seven districts, each sending five delegates, voted for on a general ticket, to the house. These delegates, however, do not have to reside in the district for which they are elected, and, in fact, in the elections that have been held it has been by no means unusual for a member to be elected for a district other than the one in which he lives. The result of this freedom as regards residence has been to increase greatly the powers of the central organizations of the different political parties. Power is thus concentrated in the hands of political leaders to an extent that does not exist in the United States. It is quite likely, however, that in view of the political character of the people, this concentration of power would have taken place to a considerable degree under any system.

It scarcely needs be said that the most important feature of a system under which the members of a legislative house are elected by the people is that of the conditions determining the electoral franchise. Regarding this point the organic act provided that the first election should be held at such a date and under such regulations as the executive council should prescribe, provided that all citizens of Porto Rico who had been bona fide residents for one year and possessed the other qualifications of voters under the laws and military orders in force March 1, 1900, should be entitled to vote. For all subsequent elections, however, the legislative assembly was given full power to make such provision as it saw fit, to determine the conditions of the electoral franchise, to make all regulations, to provide a form of ballot, and to create a machinery through which the elections should be conducted. The only limitation of this power is that contained in the section which prescribes that "the house of delegates shall be the sole judge of the election returns and qualification of its members, and shall have and exercise all of the powers with respect to the conduct of its proceedings that usually appertain to parliamentary legislative bodies. No person shall be eligible to membership in the house of delegates who is not twenty-five years of age, and able to read and write either the Spanish or the English language, or who is not possessed in his own right of taxable property, real or personal, situated in Porto Rico." In a word, after the first election, the whole matter of the important question of the electoral franchise and the conduct of elections was turned

over to the insular government that was created by the act to work out as it saw best.

In pursuance of the power conferred upon it, the executive council, acting independently of the other house of the legislature, made provision for the conduct of the first election, which was held in 1900. This it did by the promulgation of a series of orders dividing the island into seven election districts, and these in turn into voting precincts, creating a registration system, fixing the qualification of voters, providing for election officers, an electoral machinery, etc. Of these the most important was that fixing the qualifications for the exercise of the electoral franchise. These qualifications were set forth in the following language:

> Every male citizen of Porto Rico of the age of 21 years and upwards who shall have resided in this island for one year next preceding the date of election, and for the last six months of said year within the municipal district where the election is held, and who in addition possesses any one of the following qualifications: (*a*) Who is able to read and write; or (*b*) Who on September 1, 1900, owned real estate in his own right and name, or who on said date was a member of a firm or corporation or partnership which on said date owned real estate in the name of such corporation, firm or partnership; or (*c*) who on September 1, 1900, owned personal property in his own right and name not less in value than twenty-five dollars, shall be entitled to vote in the municipal district where he may reside, provided his name appears on the registry list as provided by order of this council.

At its second session in 1902 the legislative assembly availed itself of the power given to it by the organic act and passed a law for the government of

future elections. This act followed closely the provisions of the orders that had been issued by the executive council. The system created is similar to that in the American States which have adopted the Australian ballot. As regards the franchise, the only change made was that the provision which gave the right to vote to persons owning personal property to the value of twenty-five dollars was dropped and in its place was substituted the provision conferring the franchise upon those persons meeting the conditions as regards age and residence who on the day of registration are able to produce to the board of registry tax receipts showing the payment of any kind of taxes for the last six months of the year in which the election is held. The law also provided that all persons who were registered during the year 1900 would not be required to register anew or have to meet the new requirements of the law.

This was the law under which the second election in 1902 was held. In 1904 the law underwent a very important alteration as regards the qualifications for the enjoyment of the electoral franchise. By this new law the three conditions—ability to read and write, ownership of real estate, or payment of taxes—any one of which qualified a male citizen of Porto Rico who had resided in the island one year and in the district in which he offered to register for six months immediately preceding, to vote, were until July 1, 1906, wiped out, leaving only the conditions regarding sex, age and residence to be met in order to qualify a voter. After that date the additional qualification of being able to read and write must be

met. The result of this amendment to the law is to provide for universal manhood suffrage until July 1, 1906, after which no new name can be added to the registration list unless its owner is able to read and write. Those persons, however, who are properly registered before that date are not required to offer themselves for registration, but continue to enjoy the full rights of the franchise. The adoption of this amendment must be counted as a great gain by those who believe that ability to read and write should constitute one of the essential qualifications for the right to exercise the electoral franchise. It is true that this requirement does not immediately go into force and that for a generation persons not possessing this qualification will have their names upon the registration books and have the right to vote. It was impossible, however, to secure the assent of the house of delegates to any system that would result in the taking away of the right to vote from persons who were already in the enjoyment of this privilege. It was, moreover, but fair that the requirement regarding education should not enter into force until at least the opportunity afforded by the two years intervening between the passage of the act and July 1, 1906, to comply with it had been given to the young men just coming of age.

One other provision of the act of 1902 which was not changed by the amending act of 1904 should be noted. This is the one whereby the whole administration of the law is placed in the hands of the executive council. It thus devolves upon that body to appoint the supervisor of elections, over whom it

exercises full power of control, to attend to the giving of due notice of elections, the printing and distribution of ballots, the canvassing of the vote cast, and generally to take all steps necessary for the proper execution of the law. The importance of this provision lies in the fact that by it the power to insure that elections shall be properly and honestly conducted is vested in the body composed, as will hereafter be seen, of Americans or other persons appointed by the President of the United States who are thus not directly concerned in the results of the election to be managed.

A description of the organization and function of the executive council has been left to the last, as this body constitutes by far the most interesting and characteristic feature of the government that has been provided for the island. It may be said in a way to constitute the center or keystone to the whole system. Together with the governor it represents the means by which is exercised the control it has been necessary to insure to the central government.

According to the organic act, the executive council consists of the six heads of executive departments, the organization and work of which have already been described, and five other persons, all appointed by the President of the United States for a term of four years. Of these eleven members not less than five must be native inhabitants of Porto Rico. While as before said there is nothing in the law requiring Americans to be selected for the positions of heads of the departments and Porto Ricans for the remaining five places, this has in practice always been done.

Although in its character as an appointive instead of an elective house this council but conforms to the precedent of early acts for the government of newly acquired territory, and later acts for the government of organized Territories, there are a number of other important respects in which it is quite unlike any other upper house for which provision has been made by the United States. The first, and most prominent, of these unusual features is the provision assigning seats in the council to the heads of the executive departments. This constitutes a distinct departure from what is known as the American system of government, according to which there is a complete divorce of the legislative and executive functions. The result of this provision is to make the executive council the dominant one of the two houses in most matters of legislation. Being actually concerned with the administration of affairs, the heads of departments are in a position not enjoyed by the members of the other house to know the needs of the government, and it necessarily follows that most important measures originate with them.

Secondly, the executive council, in addition to constituting the upper house of the legislature and sitting for that purpose not to exceed sixty days in each year, is also required to sit throughout the year as a quasi-legislative or general supervisory body. In this capacity the council has no prototype among American political constitutions. The functions that it is called upon to perform while thus sitting other than as a branch of the legislature are partly the result of express provisions contained in the organic act and

partly the outcome of provisions contained in various acts of the insular legislature. Among the first chief mention should be made of the provisions which vest in the council the exclusive power of granting all franchises, privileges and concessions of a public nature, though its action in this respect must be approved by the governor and in some cases by the President of the United States as well; and of the right to determine the salaries and the manner of their payment of all officials of Porto Rico not appointed by the President. This latter provision, it scarcely needs be said, is of the greatest importance. Relating, as it does, to one of the most essential of governmental functions, the manner of its exercise goes far toward determining the character of the system of government of which it is a part. This point will, therefore, receive careful attention in later paragraphs. The other duties of the executive council are the result of the policy that has been adopted by the insular legislature, and is now firmly established, of providing that when legislation is enacted of such a character that the issuance of subsequent regulations or the exercise of official supervision calling for a considerable degree of discretion is required that the duty of taking such action shall be vested in the executive council. This, of course, does not apply to matters relating merely to administrative routine, which can safely be entrusted to one or the other of the executive chiefs. Among the duties that have thus been entrusted to the council may be mentioned the complete control and supervision that it exercises over the registration and election laws, and over the work-

ings of the new department of public health, charities and corrections, to which reference has already been made, the approval of all important nominations to office made by the governor, and the approval of certain municipal ordinances. This latter duty is of especial importance and throws a great deal of work upon the council. It thus, among other functions, has to examine and pass upon all ordinances passed by municipalities by which any bonded indebtedness is contracted, or by which any special license taxes are levied.

Of these various powers attention should also be given to that in relation to the determination of the salaries of all departmental employees and the manner of their payment. This power is contained in the section relating to the constitution of the executive council, which concludes with the clause, "and, in addition to the legislative duties hereinafter imposed upon them [the heads of the six departments] as a body, shall exercise such powers and perform such duties as are hereafter provided for them, respectively, and who shall have power to employ all necessary deputies and assistants for the proper discharge of their duties as such officials and as such executive council;" and in the section relating to the payment of salaries, which provides "that the salaries of all officials of Porto Rico not appointed by the President, including deputies, assistants and other help, shall be such and be so paid out of the revenues of Porto Rico as the executive council shall from time to time determine: Provided, however, that the salary of no officer shall be either increased or diminished dur-

ing his term of office. The salaries of all officers and all the expenses of the offices of the various officials of Porto Rico appointed, as herein provided, by the President, including deputies, assistants and other help, shall also be paid out of the revenues of Porto Rico on the warrant of the auditor countersigned by the governor."

These two clauses would at first sight seem to be perfectly clear. In practice, however, considerable uncertainty has arisen in their interpretation. The first would seem to indicate that each head of a department acting on his own individual judgment could employ such assistants as he deemed necessary for the proper conduct of his office, while the second apparently places in the executive council as a body the power of fixing the salaries of all such employees and of determining the manner of their payment. At any rate, if strictly construed, these two clauses would seem to take away from the legislative assembly the most important of all governmental functions, the voting of appropriations for the conduct of the government from year to year, and to vest it in the executive council.

To this interpretation the house of delegates has offered two objections: first, that though the heads of departments have the power to employ necessary assistants and the executive council the power to fix their compensation and the manner of its payment, the legislative assembly alone has the power of voting the money with which such action can be made effective; and, second, that this power of the heads of departments and the executive council relates only

to help actually required for the operation of the departmental machinery, but in no way applies to other work, though done under the auspices of their departments, such as the construction of roads and other public improvements, the maintenance of a school system, etc. Both of these objections would seem to be strained, and it is hardly likely would be upheld by any tribunal. The power to employ and fix the salaries of assistants would be nugatory without the power to pay such compensation when determined. To the second objection also the answer can be made that administrative departments do not exist as an end in themselves, but for the purpose of performing certain definite services and that all such services are of the very essence of the work of the department. Finally, the reading of the two clauses together makes it very clear that it was the intention of Congress to take this whole matter of the provision for the proper organization and conduct of the administrative departments from under the control of the legislative assembly and vest it in the hands of the departmental heads acting either individually or collectively through the executive council, of which they constitute a majority of the membership.

Although this intent of the organic act would seem to be clear, it has not been carried out. The reasons for not doing so are interesting as throwing light upon the general conditions which the new government has had to meet in its practical operation. The necessity for taking definite action in relation to this matter arose at the first session of the legislature, in 1901, when the subject of appropriations for the en-

suing fiscal year was taken up. The significance of the provisions that have been quoted was then for the first time fully realized by the Porto Rican leaders. At first the Porto Ricans were much gratified by the passage of the organic act, because it substituted a civil for the existing military form of government. As the provisions of the act, however, became better known and it was seen how largely power was centered in the hands of the American appointees, dissatisfaction with the treatment that had been accorded to the island began to show itself with increasing force. It became apparent that if the administrative heads insisted upon a rigid interpretation of the powers conferred upon them by the act and denied to the house of delegates any voice in the determination of the organization of the executive departments, and of the salaries that should be paid employees in them, this dissatisfaction would be very much aggravated. The house of delegates claimed that if participation in the voting of supplies, which ordinarily constitutes one of the most important functions of a legislative body, was denied it, all real control over the administration of public affairs would be taken from it, and that there was but little justification for its existence at all. While this is not strictly so, as that body would still have a coordinate voice with the executive council in determining the general system of laws that should be in force in the country, it was nevertheless impossible to deny that the refusal to give to the house any voice in the matter would mean a very great limitation upon the power of self-government enjoyed by the island.

Partly in view of the very great discontent that would otherwise result, and, indeed, of the danger that the house of delegates might refuse to exercise its functions at all unless they included this right, but more especially because the American representatives were particularly anxious to give to the people of the island as liberal a government and as great a participation in the management of their own affairs as the law would possibly permit, it was decided that, after the heads of the departments had carefully prepared and passed the budget, that it should be sent to the house for its approval. This was accordingly done, and a general appropriation bill reasonably satisfactory to all parties was passed. The precedent thus established has been followed at subsequent legislative sessions. In thus conceding this point the executive council has not, however, abandoned its special authority in respect to this matter, as it is well understood that should the house insist upon amending the bill so that it could not be accepted by the council the right of that body to act independently and without the co-operation of the house would be revived and exercised. In practice, therefore, these special provisions of the organic act have much the same effect as the provisions of the Hawaiian act, which directs that the existing appropriation act shall be continued in force or re-enacted for another or subsequent years in case of any failure on the part of the Hawaiian legislature to pass the general appropriation bills necessary for the conduct of the government. It must be stated that at each succeeding session of the Porto Rican legislature the lower house has exhibited an

increasing tendency to enforce its own desires regarding the budget and that there has consequently been a correspondingly increased difficulty in bringing the two houses to an agreement. It is thus still a matter of uncertainty as to whether the policy that has been adopted in reference to this matter will continue to work smoothly.

Turning now to the character and powers of the legislative assembly as a whole, the most important point to be noted is that the two houses are so constituted as to preserve as nearly as practicable a balance of power between the Porto Rican and the American representatives. In the lower house the membership is wholly Porto Rican, while in the upper house the majority can be kept American as long as the President desires to maintain that policy. The practical significance of this arrangement lies in the fact that the Porto Ricans through their control of the house can prevent any legislation to which they are opposed, while the same can be done by the Americans through their constituting a majority of the upper house, though in this case it is necessary that the action of the Americans shall be unanimous. The organic act, however, confers upon the governor the usual power of veto, and this power, of course, can be used in any case where, as the result of divided action by the American members, what is believed to be unwise legislation is passed by both houses.

This system, it is evident, possesses both advantages and disadvantages. Its advantages lie in the fact that it prevents the enactment of any measure which does

not meet with the approval of both the American and the Porto Rican representatives. On the other hand, this very fact makes the work of legislation extremely difficult, with the result that the task of reorganizing the institutions and laws of the island so as to bring them into conformity with those existing in the United States must proceed more slowly than if the powers of the American representatives were of a more positive character.

Judicial System. In no other regard have the institutions of Porto Rico as they existed under Spanish rule undergone so complete a change at the hands of the Americans as in respect to judicial organization and procedure. The entire system of courts, the civil and criminal law, and judicial procedure have been wholly altered. Nothing remains of the system of courts that was found in operation when the American forces landed. The Spanish codes, political, civil and criminal, have been abolished and in their place have been substituted others following in all essential particulars the system of law and procedure found in the American States. These great changes have been the result partly of provisions contained in the organic act, but chiefly of action taken by the insular government itself. The organic act made the usual provision for a United States district court, with the jurisdiction of both district and circuit courts in the United States, that is contained in all territorial organic acts. As regards other judicial tribunals, it provides that the judicial power shall be vested in the courts that were already in existence

until the legislative assembly shall otherwise provide, and that that body shall have full authority to legislate in respect to the system of courts as it deems proper. The only limitations to this power is that the justices and marshal of the Supreme Court of the island shall be appointed by the President, with the advice and consent of the Senate, and the justices of the district courts shall be appointed by the governor of Porto Rico, with the advice and consent of the executive council.

In pursuance of this power thus given, the insular legislature, as has been said, has taken action resulting in the entire reorganization of the judicial system of the island. Under Spanish rule Porto Rico had an elaborate system of courts, consisting of a court at San Juan composed of six judges, from which in certain cases an appeal lay to the Supreme Court of Madrid, two other superior courts composed of three judges each at Ponce and Mayaguez, respectively, twelve courts of first instance with a single judge each, and sixty-nine municipal courts. All of these courts were liberally provided with officers and employees. This system was modified to a considerable extent by the military government. It is unnecessary to describe the changes then made, as the system that resulted was itself again completely changed by a series of acts passed by the insular legislature at its session in 1904. By these acts the judicial system of the island is made to consist of the following courts. At the head is a Supreme Court sitting in San Juan composed of five judges appointed for life or during good behaviour by the President of

the United States. In practice this court has thus far been constituted of three Porto Ricans and two American members. It is a court of appeals instead of a court of cassation merely as formerly. Below this court are seven district courts, presided over by one judge each, appointed by the governor, by and with the advice and consent of the executive council, for a term of four years, unless sooner removed for cause. The judges of these courts must be able to conduct the business of their courts in the Spanish language, including the ability to instruct the jury, either verbally or in writing, in that language. Provision is also made for a substitute judge, who, under the direction of the attorney-general, may take the place of any of the regular judges who is unable to preside over his court on account of illness or disqualification for any cause. Next in rank come twenty-four so-called municipal courts, the forty-five municipalities of the island being grouped into twenty-four judicial districts. These courts have the same jurisdiction and perform the same duties as the sixty-nine old municipal courts that were abolished, and the justices of the peace. They have jurisdiction in all civil matters in their districts to the amount of five hundred dollars, and in all criminal cases except felony cases, and in the latter they act as committing magistrates. Each of these courts is presided over by a single judge, elected by the qualified voters of the district every two years at the time of the regular biennial elections. A marshal and a clerk for each court is elected at the same time. Attached to each court is also a fiscal or prosecuting attorney, ap-

pointed by the governor, and an official stenographer, appointed by the attorney-general. Finally, there is a justice of the peace court in San Juan, Ponce and Mayaguez, and in each other municipality which does not constitute an entire municipal court district, with jurisdiction to hear and determine offenses in which the punishment imposed cannot exceed a fine of fifteen dollars or imprisonment for thirty days and over all cases of violation of municipal ordinances. During the absence of the municipal judge of the district the justice of the peace may also act as an examining and committing magistrate. These justices of the peace are appointed by the governor, by and with the advice and consent of the executive council, and receive a salary of three hundred and sixty dollars per annum.

A number of features about this system of courts thus created deserve mention. The first is that not only has the number of courts been considerably reduced, but, with the exception of the Supreme Court, each tribunal has been given but a single judge. This is particularly important in respect to the district courts, as under the system abolished these courts were presided over by three judges, at least one of whom was always an American. Under the new system not only is there only a single judge, but he, together with the clerk and marshal, is elected by the people. The responsibility for the administration of justice is thus to a very great degree put into the hands of the Porto Ricans. The Porto Ricans will, consequently, be subjected to the very severe test as to whether, on the one hand, they can be relied upon to select suitable persons as candidates for these im-

portant positions, and, on the other, as to whether the persons elected to the office of judge will perform their duties without regard to their political affiliations or social obligations. The test is one which even in the United States is not always successfully met, and in Porto Rico, where political ties are so strong, the chances of failure are even greater.

By the foregoing action the judicial machinery of Porto Rico has been thoroughly reformed. Other acts have made equally great changes in the system of law to be administered and the precise manner of its administration. The organic act provided for the constitution of a commission of three persons, one of whom should be a native of Porto Rico, to be appointed by the President to compile and revise the fundamental laws of the island and especially to draft new codes of legal procedure. This commission completed its work and reported to Congress. It cannot be said, however, that its work was productive of any important results. The first legislative assembly, in 1901, without waiting for the report of the commission created by the organic act, itself created a commission with instructions to prepare a series of codes for enactment by the legislature. On the basis of the work of this last commission, the legislature at its session in 1902 passed a political code, a civil code, and a code of criminal procedure. All of these codes are modelled on similar laws as found in the United States. Trial by jury had already been established by the first act passed by the legislative assembly at its first session. This act does not make the jury system obligatory, but merely provides that it shall be fol-

lowed in certain criminal cases when the request for its use is made by the accused.

In respect to the representation of Porto Rico at Washington, the organic act provides that every two years the qualified voters of the island shall elect a resident commissioner, who must be at least thirty years of age, a bona fide citizen of Porto Rico, and be able to read and write the English language, "who shall be entitled to official recognition as such by all departments upon presentation to the Department of State of a certificate of election of the governor of Porto Rico." It will be noted that though the reasons for creating this office are the same as those dictating the provision that is always made in territorial acts for a delegate, the powers of the Porto Rican commissioner were by no means made so broad. Subsequently, however, the House of Representatives by vote has given to him the right of the floor and of serving on committees, so that at the present time his position is practically identical with that of other territorial delegates.

Financial System. Before leaving the insular government of Porto Rico, some description should be given of the manner in which it obtains its income, and the financial system that has been devised in accordance therewith. As has been elsewhere pointed out, Congress treated Porto Rico with great liberality in determining the financial relations that should exist between it and the Federal Government. During the military occupation, that is, up to the passage of the organic act of April 12, 1900, Porto Rico was treated

as a foreign government in so far as the imposition and collection of customs duties upon articles coming into the island from either foreign countries or the United States, or into the United States from Porto Rico, were concerned. All of the revenues collected in Porto Rico accrued to the benefit of the island, but all collections made in the United States on importations from Porto Rico were paid into the Federal treasury. On March 24, 1900, however, Congress passed an act providing that all the money that had thus been collected on goods coming into the United States from Porto Rico, or might thereafter be collected under existing law, should be placed at the disposal of the President to be used by him for the benefit of the government of Porto Rico and for public education and public works in the island.

The organic act provided that on and after its passage, the general customs law of the United States should continue to apply to Porto Rico in respect to all merchandise entering it from foreign countries, and the duties collected in Porto Rico, less the cost of collection, should accrue to the benefit of the insular treasury as ordinary income, but that in respect to merchandise imported into the United States from Porto Rico or imported into Porto Rico from the United States, duties of only fifteen per cent of those paid on similar articles imported from foreign countries should be paid; and that, as soon as the insular government had notified the President that the island had created a revenue system sufficient to satisfy its needs, complete free trade should be declared between the two countries, and that in any event such decla-

ration should be made not later than March 1, 1902. Furthermore, it provided that the gross collections made in the United States and the net collections made in Porto Rico, after the expenses of making such latter collection had been deducted, on account of such trade, should likewise be placed at the disposal of the President to be used by him for the benefit of the island until the civil government, the organization of which was provided for by the act, had been established, after which all future collections in Porto Rico should be covered into the insular treasury as ordinary income. In virtue of the provisions of these two acts there was refunded to the island from customs collections on Porto Rican products entering the United States a total of $2,714,249.19. This money constitutes what is known as the "trust fund," from which up to the present time all of the island's expenditures for the construction of new roads and schoolhouses have been made. The régime under which duties of fifteen per cent of the regular rates were collected on dutiable goods to and from the United States and Porto Rico continued until July 25, 1901, the date on which the President was notified that the island had established an adequate revenue system of its own. In the meantime and thereafter, of course, the Federal Government continued to collect, and still collects, the regular customs duties upon goods entering Porto Rico from foreign countries, and pays over to the insular government the money so received less the actual cost of collection.

In addition to thus assigning to the island all customs receipts, the organic act also provided that the

island should not be subject to the internal revenue system of the United States, but should have the power to organize and enjoy the benefits of an internal revenue system of its own, and that furthermore the island should have the power to take such action as it deemed advisable relative to the imposition and collection of such other taxes as should be necessary in order to enable it to meet its fiscal requirements. In pursuance of the power thus conferred upon it, the insular legislature as one of its first acts passed in 1901 a general revenue law completely revising the financial system of the island, both insular and municipal. The system of taxes in force under the Spanish régime was completely done away with, and in its place there was provided a system embracing internal revenue or excise taxes modeled after the system of the United States government and a general property tax and inheritance taxes similar to those in force in most of the individual States.

Two other points covered by the organic act should be considered in connection with this account of the insular financial system. The first is the provision that the monetary system of the United States should be extended to the island. This was duly accomplished, and though considerable trouble and some hardship resulted in the operation of the exchange, the permanent results have been good. Were no other effect obtained than the moral one of identifying more closely the economic systems of the island and the mother country, the step could be considered as fully justified. The other point relates to the power of the island to incur bonded indebtedness. In respect to

this matter the act provides that both the insular and municipal governments shall have the power to borrow money for public improvements and other desirable public uses to an amount not in excess of seven per cent of the value of property of the island as assessed for purposes of taxation. The new government has found itself peculiarly fortunate as regards this matter. Not only did it find the island absolutely without any insular indebtedness, but the existence of the trust fund, consisting of the refund of customs duties, has enabled the government to carry on very important works of public improvement without having recourse to its public credit. This fund is now, however, nearly exhausted, and the advisability of floating a loan to continue the work of internal development is receiving serious consideration.

In the foregoing account of the insular government of Porto Rico we have been compelled to restrict ourselves pretty closely to a bare description of the system as created by the organic act and subsequently elaborated by the insular legislature. It has not been within our province to attempt to criticise the wisdom of all the provisions that were made, although care has been taken to point out the significance of the more important features. In studying this system the query naturally arises as to whether the Porto Ricans themselves are satisfied with the provision that has been made for their government. To this there can be but one answer: they are not. The desires of the people are almost unanimously for a system under which governmental powers shall be more largely in

their hands. This takes the form of a demand either for the abolition of the executive council or that its membership shall be composed of persons elected by the inhabitants of the island, or that full territorial or statehood rights shall be conferred upon the island. These demands as an expression of the expectations of the people are perfectly legitimate ones. Nevertheless, the sentiment of those Americans who have had any opportunity to acquire a knowledge of the present political capacity of the people is equally unanimous that compliance with such demand at this time would be disastrous both to the cause of good government and to the best interests of the people themselves.

The problem that Congress had to meet when it framed the organic act—that of providing a system of government that should at once grant a maximum of local autonomy and at the same time make provision for sufficient central control—was an exceedingly difficult one. If it has erred, it has been in immediately granting too much rather than too little. Most Americans who have had any personal knowledge of conditions in Porto Rico since the inauguration of civil government will probably agree with the opinion of the first governor of the island, Hon. Charles H. Allen, as expressed by him in his first annual report submitted May 1, 1901, where he says: "I feel as the result of one year's close study on the spot, of all the conditions surrounding the problem, that Congress went quite as far as it could safely venture in the form of government already existing in the island, and as the result of such experience and observation,

I fully believe that with good men devoted to the work the island will develop faster under such form. Its people, through experience and education, will advance more rapidly in their knowledge of civic virtues under a guidance of present methods than could be gained in any other way. And I therefore feel that a departure from the present general form, except such minor modifications as experience will show from time to time to be wise and necessary, would be a grave mistake, and likely to be attended with considerable annoyance and anxiety. And I go a step farther to say that intelligent Americans fully acquainted with the situation, without regard to political affiliations, if interrogated, would stand as one man on the proposition that Congress had gone as far in the present form of government as it possibly could until experience and training have produced their results in a fuller knowledge of the duties and responsibilities of civil government on the part of the inhabitants."

CHAPTER V

GOVERNMENT OF PORTO RICO: LOCAL GOVERNMENT

Of the tasks going to make up the general problem of the government of dependent territory, there is probably none more interesting, certainly none more important, than that of the division of the territory into districts and the organization for each of a government through which local public affairs may be administered. The questions here involved are among the most intricate and difficult of solution in the whole field of government and administration, and the character of the action taken to meet them more than anything else determines the essential nature of the political institutions that the inhabitants of the territory are to enjoy.

Consistent with its policy in the past, Congress, in making provision for the government of Porto Rico, made no effort itself to work out a system of local government for the island, but instead turned over this whole question to the island itself. The obligation thus imposed upon it constituted the most important responsibility with which the newly created insular government was charged. Although Porto Rico at the time of its acquisition was in possession of a complete system of local government, the principles upon which this system was based, and especially the manner in

which it was actually administered, were so completely at variance with American theory and practice that it was inevitable that radical changes would have to be made at the earliest possible moment. The insular government immediately upon its organization, therefore, entered upon the task of the reorganization of the existing system for the administration of local affairs. Bills relative to local government have occupied a large part of the attention of the four regular sessions of the insular legislature that have been held since the organization of civil government in 1900, and a long series of acts have resulted completely reorganizing the system for the administration of local affairs as it existed under Spanish rule.

System under Spanish Rule and Its Defects. That the nature of the problem thus confronting the insular government, as well as the significance of the changes made by it, may be clearly appreciated, it is necessary that a description of the action taken should be preceded by at least a brief account of the system that it found in operation, together with an enumeration of the more important shortcomings that made a change desirable.

For the administration of local affairs the American authorities found the island of Porto Rico divided into sixty-six districts, known as "municipios," or municipalities. Each district had within its boundaries at least one urban settlement of greater or less population, which always bore the name of the district and constituted the seat of government. There was no distinction, however, between the government

of this urban center and the rural parts of the district, both being under the same authority. The government of each municipality was vested in a body known as the "ayuntamiento," which consisted of the "alcalde," or mayor, and the municipal council, the alcalde being at once the executive officer of the municipality and the president of its council. The number of councillors was determined by the population of the district, and the councillors as well as the alcalde were elected by a vote of the people, though the governor-general had large powers of removal and appointment to the vacancies thus created. Each municipality was divided into a number of districts known as "barrios," and each barrio had an official known as a "commissario," who represented the mayor within the district and had powers somewhat similar to those of a justice of the peace. There were, of course, other municipal officers, a system of courts, etc.

Much the most significant feature of this scheme of government, of which the barest outline only has been given, was the relations which existed between it and the insular or central government of the island. These relations were exceedingly involved, and nothing short of an historical account of local government in the island during the last century could afford a comprehensive idea of the condition of affairs. It is not practicable to attempt any such study here, and we will, consequently, have to content ourselves with the general statement that the municipal law was so framed as to give to the central authorities the power of intervention and control in respect to municipal

affairs at almost every point. While the mayor and councilmen were elected by the qualified voters of each municipal district, they could be removed by the governor-general at his pleasure and other persons designated to fill the vacancies thus caused. Municipal budgets before they became effective had to be submitted to the insular authority in order that the latter might satisfy itself that no illegal appropriation or tax was provided for and that the legal obligations were duly met. As the commission appointed by the insular government to frame revised codes for the island expressed it in its report, published in 1902: "In the Spanish administrative system as applied in Porto Rico the control of the insular authorities over the 'municipios' (municipalities) was conferred in sweeping provisions which made it possible to reduce local government to a minimum. . . . These and a number of other provisions . . . gave to the insular authorities complete control over local administration."

This, in brief, was the general character of the system of local government to which the new civil government fell heir. It was objectionable alike to the inhabitants of Porto Rico and to the American authorities. The defects of the system were both of organization and administration. As regards organization, the first point of criticism was the failure to make any distinction between the government of the larger and of the smaller municipalities. All, without regard to their relative importance, had the same form of government. The smaller municipalities, representing poor rural districts, were thus compelled

to maintain the same set of officers and an administrative machinery as elaborate as that of the wealthy districts. In many cases the municipalities were too poor to do this. All of the resources of such municipalities were absorbed in the payment of administrative salaries and nothing remained with which to carry on needed public works.

A second defect, and one which went to the very basis upon which the system was organized, was a failure to make a proper division of legislative, executive and judicial duties. The alcalde, or mayor, was at the same time the chief executive, the president and the dominant member of the municipal council. The municipal council, on the other hand, not only sat as a legislative body for the enactment of city ordinances, but appointed all administrative officers. There was thus nothing in the way of a check upon legislative action by the executive, or vice versa, and under this system it was a matter of comparative ease for one or a few men absolutely to control the administration of affairs in their own interests except only as checked from time to time by the central government.

A third important organic defect was in regard to the relations that existed between these governments and the central government. It has been pointed out that the municipal governments could take little or no important action without receiving the prior approval of the central authorities. The Porto Ricans naturally chafed under a system whereby they could not move a step without obtaining a prior authorization. The American authorities were no less opposed

to the system, because under it there was not only a constant clash of authority, but the conduct of affairs was so complicated that it became almost impossible in many cases to know where the real powers of action were located. To a large extent the different offices of the central government were made bureaus of complaint for taxpayers and others who thought that they had been unjustly treated, and almost every act of the local authorities caused claims or petitions to pour in upon the central government, concerning the merits of which the latter was often not in a position to pass judgment. Though apparently the central government exercised, and really had, the power to control at most points, in practice it was able to accomplish but little in the way of insuring good local government for the island.

Most objectionable of all, however, was the fact which resulted from the foregoing, that the essential principle of good government was violated in the failure of the system definitely to bring home to persons holding office their political obligations. As long as this system was maintained all idea of educating the people in the principles of responsible and honest self-government was hopeless. If such a government was ever to be built up on the island, it was imperative that a simpler and more direct system should be devised—one in which the officers should have real powers of action within their spheres of duties, and in which they could be held to rigid accountability in case they failed properly to perform them. That which needed to be done, in other words, was the abolition of the old practice whereby permission had

to be obtained in advance, and under which real responsibility could never be felt, and the adoption in its place of a system under which direct power of action should be given primarily to the local authorities, and control by the central government be exercised merely in the way of enforcing the proper performance of these duties.

Turning now to the defects in the administration of the system, the first to be noted is that the municipalities failed to perform a number of the most important duties properly belonging to local government: that too great dependence as regards them was placed upon the insular government. This failure was especially apparent in respect to the obligation of maintaining a suitable system of public schools and to the opening, improving and caring for municipal highways. The entry of the United States authorities into power had, if anything, aggravated these evils. Thanks to the "trust fund," which Congress had so generously placed at the disposition of the central government for the prosecution of works of public utility, the central government was doing a great deal in these matters. This action, while productive of material improvement, was having a bad effect upon the development of self-reliance on the part of the local governments. It was a matter of prime importance, therefore, that in some way the local governments should be brought to a realization of their responsibilities and duties in respect to these matters.

On the other hand, the municipalities were spending their revenues with extravagance in directions which resulted in little direct benefit to the taxpayers them-

selves. A considerable part of their total expenditures went for the payment of excessive or unnecessary salaries, and for objects of private rather than public improvement. The case where one alcalde secured an appropriation of several hundred dollars a year to pay for the musical instruction of his son in Europe is but one example among many of the ways in which use was made of public funds to further private ends. As a result of these various influences, many of the municipalities had failed to meet their obligations and were burdened with a large floating indebtedness, for the meeting of which no adequate provision was made.

After all, however, the greatest evil presented by municipal government as carried on in the island was the failure to obtain as officials men who would use their office for the public rather than private good. General George W. Davis, late military governor of the island, a very acute observer of Porto Rican conditions and problems, excellently stated the evils of political life in Porto Rico in his valuable report on "Civil Affairs of Porto Rico" to the War Department, in 1899:

"In order," he wrote, "to permit American customs and policy to take root in this island and to prepare it for transformation into an organized Territory, it is desirable to set aside personal politics, which is one of the inherent vices here. The public mind must also be disabused of the idea, still dominant, that the whole art of politics consists in securing power in order to give offices to one's friends. It has been too much the rule here for office-holders to neglect public interests and to blindly obey those who, having put them into office, can also remove them. Their endeavors are chiefly directed to obtaining

high salaries, and they give little return therefor. Besides, it is necessary to instill vigor into municipal life by granting full local autonomy. This will accustom the people to act for themselves and not to look to the government for everything, as has been the case until now.

"It is especially necessary to wipe out all of those inherited vices and to prepare the country for a real democratic régime, to suppress all abuses, and to install new methods of administration and government, so as to allow the people to take part in the control of their local affairs without the predominant influence of persons having only political ambitions to serve."

It is difficult to describe the extent to which office in the municipalities was used merely as a means for furthering private ends and gratifying personal and political enmities. The especially discouraging feature, moreover, was that, to a very great extent, this action seemed to the Porto Ricans quite the natural and proper thing. It was a frequent occurrence for officers of municipalities to enforce with great hardship the collection of taxes resting upon property owned by their political opponents while practically condoning or failing to collect taxes due on property owned by themselves or friends. If a man incurred the hostility of the party in power, that party would annoy him in every possible way. If he was the owner of a slaughter-house, it would impose a special tax on slaughter-houses which, while apparently fair enough on its face, would be so framed as to drive him out of business. Though such actions were in most cases subject to review by the central authorities, it was impossible for the latter in many instances to go below the bare proposition and detect the object in view or to follow up and enforce the just application of the

ordinance. The first requisite of good government—fair and equal treatment of all citizens—was thus persistently violated, and the central government, under the system which existed, found itself to a large extent without power to apply a remedy.

To recapitulate, then, the evils of the existing system were: (1) the maintenance of an elaborate governmental organization by municipal districts of little importance; (2) the exercise of legislative, executive, and to a certain extent, judicial functions, by the same individuals; (3) the failure to bestow power in such a way that real responsibility was at the same time incurred; (4) the intervention of the insular government in the way of approving or directing what should be done, rather than in seeing that the powers possessed, or those that should be possessed, by local authorities were properly exercised; (5) the misapplication of public funds, through their employment for the benefit of individuals rather than the general public, and the consequent failure to provide for important public services, like public instruction, road improvement, etc.; (6) the failure adequately to distinguish between the sources of revenue belonging, respectively, to the municipalities and to the insular government; and (7) the utter failure of those in authority even to understand, much less to fulfill, their political obligations.

Reorganization of the System. The foregoing will serve to show the imperative necessity that rested upon the insular government promptly to take in hand the matter of the reform of local government upon the island.

It was comparatively easy to see the defects of the existing system, but quite another matter to frame a better plan of government to take its place. The great difficulty in the way of action was the political one—the fact that the American and the Porto Rican representatives in the legislative assembly were widely at variance in respect to the policy that they believed should be pursued in the work of reorganization. The Porto Ricans, through their representatives in the house of delegates, were nearly a unit in demanding that the control to be exercised by the insular government over municipal affairs should be restricted within the narrowest possible limits. The Americans, on the other hand, while fully appreciating the desire on the part of the Porto Ricans for self-government, believed that for some time to come it was absolutely essential that the insular government should continue to maintain an effective control over the administration of municipal affairs. The chief explanation of the failure of local government on the island, as has been pointed out, lay in the fact that the Porto Ricans had no adequate conception of the responsibilities entailed upon those occupying official positions in respect to the public. Until the Porto Ricans could be made to appreciate the true nature of political obligations—that the chief motive for the possession of office should be the public good rather than ability to gratify private ends—anything like a surrender to them of governmental power without a rigid control from above would have meant merely the aggravation of existing evils. As General Davis, in his report already cited, said: "This [the organization of local government],

it seems to me, must be done under superior supervision; for to hastily abandon the island to local control unrestrained by superior power would, or might, result in the greatest disaster." In speaking of this same subject the commission appointed to draft revised codes for Porto Rico said in its report:

> In fact, great care must now be taken lest this extension [of political powers] be made too rapidly, resulting in the introduction of institutions for which the people are unprepared. Until the last years of Spanish rule the native element was denied participation in public affairs, and, therefore, lacked the political training which prepared the people of the United States for local self-government. In organizing the local institutions of the island this fact is of paramount importance. The experience of the first year of civil government has proved conclusively that without some form of central control local services are neglected or inadequately performed.

To meet the various requirements of an improved system of local government, action along a number of different lines was required, and this action, it was deemed, could best be taken by means of separate laws. The legislature has, accordingly, passed a large number of acts, most of which were passed at the session held in 1902. Much the most important of these is the general municipal act of March 1, 1902, by which the whole system of municipal government was reorganized and put upon a new basis. This act should receive our first attention.

Government of Municipalities. In the preparation of the general municipal law two main considerations controlled: that of devising a system of government

that should be at once economical and efficient; and that of determining the relations that should exist between this government and the insular government. Both of these offered peculiar difficulties. It will be conducive to clearness if we first describe the scheme of government adopted. This done, we will then be in a position to consider with better appreciation the more interesting point of the relations that were established between these governments and that of the island generally.

In meeting the first consideration, that of devising a form of government for the municipalities, the prime requisite, if a consistent system was to be evolved, was the adoption of certain general principles that should be applied throughout the system. The first point, therefore, that was decided upon was that the existing system of the division of the island into municipal districts with a single government for each should be preserved; that no effort, for the present at least, should be made to introduce the American system of county and town governments, by which a distinction between the government of the rural and urban portions of a community is made. The reason for this policy lay in the fact that the existing district, or communal, system is the only one that the inhabitants have ever known, that the people are deeply attached to it, and that its existence in practically all Latin countries would seem to indicate that more nearly than any other it corresponds to their peculiar political opinions. The reasons for the separation of the urban and rural governments are, moreover, much weaker in Porto Rico than in the United

States. Not only are the urban settlements in most of the municipal districts of comparatively little importance, but the interests of such settlements and of the rural portions of the district are much more nearly identical than in the United States on account of the practice that largely prevails in Porto Rico of owners of farms living in the towns. The retention of the system as a general system, moreover, in no way interferes with the subsequent erection, if it is desired to do so, of independent governments for the larger towns through the grant of special charters. Finally, by the adoption of this policy a too radical break with historical traditions and practices is avoided.

The second principle that was adopted, as one of the fundamental bases of the new law, was that a clear distinction should be made between the legislative, executive and judicial functions, and that each should be placed in the hands of a separate body of officials. In each municipality the legislative power, or power to pass ordinances in relation to local affairs, was entrusted to a single body, called the "municipal council." This body consists of five or nine members, according to whether the population of the municipality is less than twenty thousand persons, or equals or exceeds that number.[1] These members are

[1] This division of municipalities into two classes, according to their population, figures in respect to certain other features of the system—as, for example, when the maximum salaries that may be paid to alcaldes or other officers are fixed. The four municipalities of San Juan, Ponce, Mayaguez and Arecibo, containing the four important cities of the island of the same name, are also given a slightly different status from the other municipalities. Though their system of government is the

elected every two years, at the same time that delegates to the insular legislature are chosen, and by the same electorate. The members serve without pay, and no member is permitted to hold any other public office or employment the compensation of which is paid out of public moneys, or to be interested, directly or indirectly, in any contract with the municipality. All vacancies on this council, occurring for any reason whatever, are filled by appointment by the governor until the next election; and if a member fails to attend three consecutive meetings of the council, without being duly excused by that body, his office is declared vacant. The meetings of the council must be public and must be held at regular intervals, with a frequency of at least once a week. Special sessions may be called by the mayor when he thinks that the public interests require it, and he must do so upon the petition of one-third of the councilmen or when so directed by the secretary of Porto Rico. The council effects its organization by the election of a president and vice-president, or substitute, as he is called, from among its members, and a secretary, who is also the general secretary for the municipality, from outside its membership.

The powers of the council are exclusively of a legislative character, with the possible exception that, in addition to selecting its own officers, it appoints the secretary and the comptroller of the municipality. The reason for this departure from the general policy

same, they are permitted to have councils of fifteen members and slightly higher salaries are authorized for their important officials.

of vesting the appointing power in the mayor lies in the nature of the duties of these officers. The comptroller has as his essential functions the examination of all claims against the municipality and the auditing of the accounts of the treasurer and other executive officers through whose hands municipal funds pass. For this reason it was thought desirable that his appointment should not be made by the same person as that of the treasurer and other officers over whose operations he is expected to exercise a supervision. The same reason applies to the secretary, as that officer in the smaller municipalities performs the duties of the comptroller as well as those of the secretary's office proper. Though the appointing power, with the exceptions noted, is thus taken away from the council, that body still retains the power to fix all salaries within the limitations provided by the law under consideration. To prevent any abuse of this power, the important provision is made that all salaries must be fixed in the annual budget making appropriations for the coming year, and when so fixed no change can be made in them during the year. The law further provides that neither the mayor nor any municipal employee shall receive any additional remuneration whatsoever from any municipal funds. These provisions are intended to prevent any possibility on the part of a council of attempting to reward or punish an official, for following or disregarding its wishes, by increasing or reducing his remuneration.

It is of interest to note the extent to which this system differs from the one it supplanted. The most important changes made in the constitution and

powers of the councils as they were under the old system consist: (1) in the limitation of the memberships of the councils to a smaller number; (2) in the provision that the president of the council shall be elected by that body from among its members, instead of being the alcalde; and (3) in taking away from the council all power of appointment except in the two cases noted. The first change was made for the purpose of lessening the number of municipal officials, which was excessive; the second and third in order to carry out the theory that had been adopted of separating, as far as possible, legislative and executive functions. These differences, simple in themselves, have made a very great change in the manner in which municipal government is actually carried on.

In providing for the executive branch of government the principle of concentrating administrative power in the hands of one person is unreservedly adopted. The chief executive officer of each municipality is, as under the new system, the alcalde, or mayor. He is elected at the same time as the council and, like the members of that body, for a term of two years. Two very important changes, however, are made in the powers of this officer from what they were under the old system. On the one hand, the alcalde is shorn of all legislative and judicial functions. Not only is he no longer the president of the council, but it is expressly provided that he shall take no part in the meetings of the council, only appearing before that body when so requested by it. His judicial powers had already been taken away by the act passed at the first session of the legislative assembly creating mu-

nicipal courts to try petty offenses which formerly came before the alcaldes for decision. This union of executive and judicial powers in the hands of the alcaldes had given rise to the most unbearable abuses. The power to punish petty offenders that was thus possessed by the alcaldes was in many cases used by these officials for the punishment of both political and personal enemies. One of the first acts of the legislative assembly was, therefore, to take away this power and confer it upon the independent municipal courts.

While the alcaldes are thus deprived of all legislative and judicial functions, their administrative powers are greatly strengthened. All appointments, with the exception of those of the secretary and comptroller, which have been mentioned, that were formerly made by the council, are made by them, and all of their appointees may be removed by them at their pleasure. The alcaldes are thus made directly responsible for the securing of capable and honest public servants, and for the faithful performance of their duties. Upon the alcaldes also falls the duty of preparing the budget of estimated receipts and necessary disbursements for submission to the council. This part of their duties will be considered more particularly in another place. The salaries of the alcaldes are fixed by the councils of the respective municipalities, but may not exceed six hundred dollars per annum in the smaller, and twelve hundred dollars per annum in the larger municipalities.[1]

[1] Higher salaries, as already noted, are permitted in the cases of the important municipalities of San Juan, Ponce, Mayaguez and Arecibo.

Following a system existing under the old form of government, provision is made for a delegate, to be appointed by the alcalde, for each of the rural districts, or "barrios," into which the municipality is divided. The duties of these delegates are prescribed by ordinance of the council, but may not include any power not exercised by the alcalde. The delegates may or may not receive a remuneration, as the council of each municipality may elect, but if a remuneration is provided it may not exceed three hundred and sixty dollars a year. In the same way the alcalde may, where he deems it advisable, appoint a special commissioner for populous centers within the municipal limits. The necessity for these officers acting as the representatives of the mayor is due to the great difficulty of communication which often exists between different parts of the same municipality. There are a great many details of administration which the mayor has to attend to, and without such representatives the proper and prompt performance of these duties would be difficult.

The appointment and primary duties of the secretary of each municipality have already been described. He keeps all the records of the municipality, attends to official correspondence, issues certificates, etc. His most important other duty is that of acting as the comptroller in the smaller municipalities. This duty will be described when the duties of that officer are considered. The salary of the secretary is fixed by the municipal council, but may not exceed six hundred dollars in the smaller and one thousand dollars in the larger municipalities, per annum.

A vital point in any system of administration of local affairs is that of the management of the public funds. To look after this class of duties, the law provides that in each municipality there shall be two officers, to be known, respectively, as treasurer and comptroller. In the smaller municipalities, as has been said, the latter office is filled by the secretary, who in such cases must act in this capacity without any additional remuneration. Where a special officer for comptroller is appointed he receives a salary as fixed by the council, but which may not exceed nine hundred dollars per annum. The salary of the treasurer is fixed in the same way and may not exceed six hundred dollars in the smaller and one thousand dollars in the larger municipalities. For reasons already given, the comptroller is appointed by the council and the treasurer by the alcalde. Both must give bond for the faithful performance of their duties in such sum as may be prescribed by the council, with two or more sureties to be approved by both the council and alcalde. The duties of these two officers are indicated by their titles. The treasurer has the care and custody of all moneys of the municipality; and all moneys received by any other officer, in the way of fees, fines, or otherwise, must promptly be turned over to him. He also acts as disbursing officer, and no payments can be made out of public funds except by him. No such payment, moreover, may be made except in accordance with budgetary appropriations and upon warrants signed by the comptroller and countersigned by the mayor. The comptroller performs the duties of claim examiner, auditor and ac-

countant. All claims or bills against the municipality must pass through his hands and be approved before they can be paid by the treasurer. He must keep separate accounts of each appropriation, and of the dates, purposes and manner of all payments on their account; he must examine and audit the accounts of the treasurer and of all other officials through whose hands public funds pass in any way, and promptly report in writing to the mayor and to the council any default or irregularity he may discover on the part of any municipal officer. No payment may be authorized by him until he has examined the claim and found it to be legally due, and has satisfied himself that the payment has been legally authorized, that the money for its payment has been duly appropriated, and that such appropriation has not been exhausted.

The only other administrative officers specially provided for by the new law are the health officer and the inspector of public works. Each municipality must make provision for a health officer. He is appointed by the mayor, and his salary, which may not exceed twelve hundred dollars a year, is fixed by the municipal council. This officer is expected to have charge of, and in the smaller municipalities personally attend to, a great variety of important matters relating to the public health. He thus acts as physician to the poor, sanitary inspector, inspector of cattle to be slaughtered for food, general overseer of hospitals, cemeteries, etc. In addition he performs such other duties as may be imposed upon him by law or by regulations of the Superior Board of Health. He

must make an annual report to the Superior Board of Health and to the municipal council. In municipalities, the total cash receipts of which equal twenty thousand dollars a year, provision may be made for an inspector of public works to have general charge of the carrying out of the work of construction, maintenance and repair of public buildings, grounds, roads, etc. This officer is appointed by the alcalde, and his salary, which is fixed by the council, may not exceed six hundred dollars a year. For the care of the poor, provision is made in each municipality for a board of charities to consist of three persons, two of whom are appointed by the alcalde, the third, the chairman, being *ex-officio* the municipal health officer. These positions are unsalaried.

In respect to the third branch of government, that having to do with the exercise of judicial powers, the act makes practically no provision. In point of fact the insular government has assumed almost exclusive control over this matter. The system of courts is an insular one, and all judicial expenses are borne by the insular government with the exception of the payment of the expenses of the justice of the peace courts, which are borne by the municipal budgets. For the enforcement of municipal ordinances recourse must be had to these courts or to the municipal courts. It is true that there are, as already described, twenty-four so-called municipal courts, the judges and chief officers of which are elected by the people, but as the expenses of these courts are borne by the insular government, and they are subject to the control of the attorney-general in respect to the manner in which

they perform their duties, they are more properly a branch of the insular than of the municipal government.

From a description of the framework that has been provided for municipal government, or the instrumentalities through which local affairs are administered, we now turn to the consideration of the sphere of activities that has been assigned to the local bodies. The enumeration of the powers of the municipalities is contained in Sections 23 and 24 of the act which provide: "That the councils shall have power, subject to the further provisions of this act, to pass any ordinance or resolution not in conflict with the laws of the island in respect to the following matters: (1) the opening and survey of streets, parks and promenades, and other municipal public highways; (2) paving, lighting and drainage; (3) water supply; (4) public bathing establishments, lavatories and slaughter-houses; (5) fairs and markets; (6) public education and libraries; (7) sanitation and hospitals; (8) public charity; (9) cemeteries; (10) construction of buildings; (11) police regulations in relation to public order and health, and in relation to each of the public functions herein enumerated and to the public welfare. They [the councils] shall have power by ordinance to establish penalties by way of fines not exceeding twenty-five dollars, or imprisonment not exceeding thirty days, or both, for infractions and violations of municipal ordinances and police rules and regulations, to be enforced by proceeding in the proper court."

Although this enumeration of powers is apparently

a comprehensive one, various important observations should be made. The first of these is that, not only is practically the whole burden of the support of the judicial system assumed by the insular government, but that that body has in like manner taken over the whole work of the repression of crime and the maintenance of order. Owing to the inefficiency of the municipal police forces in the various municipalities, and especially the extent to which they had been used for political purposes, the insular legislature as one of its first acts provided for the definite assumption by the insular government of the work of policing the island. The act by which this was accomplished provides for a body of men to be organized and managed much as a military force. It is under the direction of a chief of police and subject to the general supervision of an insular police commission appointed by the governor with the consent and approval of the executive council. The exact numerical strength of this force is determined by the police commission with the approval of the governor, but may not exceed a total of eight hundred and twenty-six officers and privates. In cities having a population of over nine thousand the governor may, upon becoming satisfied that such city is financially able to maintain a police force and preserve order, withdraw the insular policemen and turn over the care of the public safety to the local authorities. Except when this is done, municipalities are not permitted to maintain a police force. They may, however, provide for the appointment of sanitary inspectors.

In the second place, although among the powers

given to the municipalities those in relation to education and public roads figure, these two very important public functions have practically been taken out of their hands through the extent to which, on the one hand, their performance has been assumed by the insular government, and on the other, entrusted to independent local school boards and boards of road supervisors that have been created to have immediate charge of these matters in so far as they are left to local management and control.

Local School Boards and Boards of Road Supervisors. Provision for local school boards was made by the general educational act passed at the first session of the legislative assembly in 1901. This act provided that the island should be divided into school districts coterminous with the respective municipal districts, for each of which there should be elected at the time of the regular biennial elections an unsalaried school board of three members. Upon these boards was conferred the power to take all such action in reference to the construction of school buildings and the maintenance of schools in their districts as was not expressly reserved to the insular commissioner of education. The most important provision of this act, from the standpoint of the present study, was that which required each municipality to pay over to the school board for its district not less than ten and not more than twenty per cent of all receipts from taxes. This provision was subsequently amended in 1902 so as to make this proportion fifteen and twenty per cent, respectively. Still later, in 1904, it was

further changed so as to make the payment twenty-five per cent of all receipts on account of the general property tax instead of a percentage of the receipts from all taxes. This change was made largely in order to simplify bookkeeping and to enable the amount going to the school boards to be determined more accurately in advance. In this connection mention should also be made of another act that was passed in 1902, by which it is provided that any municipality desiring to do so may levy an additional tax not to exceed one-tenth of one per cent upon the assessed value of the property within its district as a special school tax, the proceeds to be paid over to the school board for expenditure by it for educational purposes. This provision has been largely availed of by the municipalities.

The creation of boards of road supervisors was provided for by the passage of an act entitled "An act to divide Porto Rico into road districts and to provide for building, maintaining and repairing country roads," which was approved March 1, 1902. This act provides for the division of the island into seven road districts, corresponding to the seven election districts, and the election in each, at the time of the regular biennial elections, of a board of three road supervisors. Members of these boards must possess all the qualifications of members of the house of delegates and in addition own real or personal property within the district for which they are elected to a value of not less than five hundred dollars. Each member is entitled to a compensation of four dollars a day for each day of actual service, but in no case can the total

compensation, including traveling expenses, exceed two hundred dollars a year. Each board must organize, by electing one of its members as chairman, another member as secretary and auditor, and a third person, not a member, as treasurer. The latter officer may be the treasurer of the municipality in which the board has its headquarters. He is entitled to such compensation, not to exceed two per cent of the money passing through his hands, as the board of road supervisors may determine. As thus organized these boards are given very extensive powers in respect to the opening, laying out, and maintaining of local highways. They can own property, exercise the right of eminent domain, construct bridges, survey and construct roads, employ all necessary labor, let contracts, etc. In performing these duties, however, they are subject to the rigid control and supervision of the commissioner of the interior, and no work can be performed until the plans for it have been approved by that officer. The law thus provides that the superintendent of public works (an officer under the commissioner of the interior) shall, with the advice of the board of road supervisors of each district, and in co-operation with the district engineer which each or several boards acting together are required to employ as a technical advisor, draw up a general plan of all the roads and highways of Porto Rico, exclusive of present and prospective insular roads, together with suggestions for improvements. After this plan has been approved the commissioner of the interior is directed, subject to the approval of the executive council, to divide such roads into two classes: municipal or vicinal roads or roads

joining two or more municipal districts; and rural roads, or roads wholly within and for the exclusive use of one municipal district. The construction, maintenance, and repair of both classes of these roads will thereafter constitute a charge upon the district treasury. With this general plan adopted, each board of road supervisors must then, on or before the first day of June of each year, submit to the superintendent of public works a general plan of the improvements within its district contemplated for the next fiscal year. The superintendent may make such modifications or amendments in the plan as he may deem necessary and return it to the district board. If a majority of the district board fail to agree to the changes made by the superintendent, the matter is referred to the commissioner of the interior, whose decision is final. On or before the first day of October, the district engineer attached to each board must submit to the superintendent of public works the technical plans for the execution of the scheme of improvements that has been adopted. These plans may, in like manner, be modified by the superintendent of public works, and in case of disagreement between that officer and the district engineer, be referred to the commissioner of the interior for his final decision. With the plans thus definitely adopted, advertisements for proposals to execute the work must be inserted in at least one newspaper of general circulation for a period of not less than ten consecutive days and the contract let to the lowest responsible bidder.

To carry out this work it is evident that considerable sums of money are required. To obtain this the act

accordingly provided that each municipality should turn over to the road district in which it is located not less than fifty per cent of all taxes collected on real property within the rural portion of its district. As in the case of the payments required to be made to the school boards, this system led to an unnecessarily complicated system of bookkeeping. In 1904 it was accordingly changed so that, beginning with July 1 of that year, the payment should consist of eight per cent of all collections on account of the general property tax for municipal purposes, whether such tax was on real or personal property or on property within the rural or urban portions of the municipalities. This change it was estimated would not materially affect the net amount going to the boards.

Various considerations suggest themselves in connection with this policy that has been adopted by which special bodies have been created for the care of the two most important classes of positive obligations of local governing bodies. The motive underlying the enactment of these laws was the desire, on the one hand, to provide for bodies which should take direct charge of these two interests, and, on the other, to make it obligatory upon the municipalities to devote a reasonable portion of their income to these two classes of work. Especially was it desired, through the law relating to roads, to ensure that the rural portion of each municipality should get a more nearly just share of the municipal expenditures than they had received in the past. While these objects are undoubtedly secured by these acts, it should be recognized, however, that they are obtained only by

materially lessening the powers and influence of the municipalities. In consequence of this legislation, the municipalities have practically no voice in respect to either education or public roads. Their influence ceases when the perfunctory action has been taken of including each year in their budgets the sums which the law requires shall be handed over to the school boards. The latter, it should be noted, are in no sense subordinate to the municipalities. Although deriving their income from them, they are independent in every way of the municipalities. It is a question whether the curtailment of municipal power and distribution of municipal functions among separate bodies has been a wise procedure or not, whether indeed the objects aimed at could not have been secured in some other way; such, for example, as by imposing the obligation that certain portions of the municipal income should be devoted to education and road improvement, but placing its expenditures in the hands of special committees of the municipal council instead of independent boards. This is especially true, as one of the greatest defects in the present municipal life of Porto Rico is the lack of really vital questions with which the municipalities shall concern themselves.

Financial System. Returning now to the provisions of the general municipal law, there remain for consideration those provisions having to do with that most important of all governmental functions—the raising and expending of the public income. For purposes of study the field of municipal finance may be divided into the following five heads: (1) municipal

income; (2) municipal expenditures; (3) power to incur bonded indebtedness; (4) preparation and voting of the budget; and (5) the care and disbursement of, and accounting for, public funds.

The provisions of the law relative to municipal income are contained in section 60 of the act, which reads as follows: "Any municipality shall have power to derive its revenue from the following sources, and no taxes, imposts, excises, other than those herein enumerated, shall be levied by a municipality, unless expressly authorized by this act, or by the laws of Porto Rico:

1. The income from municipal markets, slaughter houses, cemeteries, water works, gas works, or other property owned by the municipality.

2. The income from any taxes apportioned to the municipality by the laws of the island.

3. The proceeds of any tax on real and personal property situated within the municipal district, duly authorized by the legislative assembly and not exempted by the laws of the United States, nor by any act of the legislative assembly.

4. Such license taxes as may be authorized in pursuance of the act entitled "An act to provide temporary revenue for the municipal districts of Porto Rico," approved January thirty-first, 1901, which act is hereby continued in force from and after June thirtieth, 1902, until repealed or modified by act of the legislative assembly.

5. Fines imposed by police and municipal courts.

6. Fees for issuance of certificates of registration of cattle brands at the rates fixed in this act.

7. Charges for licenses for vehicles, boats, peddlers, billiard tables, pawnbrokers and river and harbor ferries, at the rate fixed by ordinance.

8. Charges for permit to place seats for hire, or booths, in public places.

9. Charges for permits for public amusements and shows.
10. Charges for dog licenses.
11. Charges for permit for sewer connection.
12. Contingent receipts and interest on public funds.

A few words will be required to make clear the relative significance of these different sources of income. Much the most important is that figuring as paragraph three: "The proceeds of any tax on real and personal property situated within the municipal district, duly authorized by the legislative assembly and not exempted by the laws of the United States, nor by any act of the legislative assembly." Under this head is included the general tax upon property, not to exceed eight-tenths of one per cent, which, as described in our consideration of insular finances, the municipalities have the right to levy. The administration of the tax, it should be said, is entirely in the hands of the insular government, the treasurer of Porto Rico making the assessment of property and taking charge of the collection of the tax. The reasons for this arrangement, instead of one whereby the tax is collected by the local authorities, as usually prevails in the United States, are to secure economy of administration, on the one hand, and, on the other, to avoid the inequitable action in respect to both the assessment of property and the collection of the taxes that would result if these matters were left to the local authorities. The tendency that exists on the part of local officials to make use of their powers for the gratification of their private preferences and prejudices has already been pointed out. When this defect has been cured through education and experience it will be eminently

proper to place the administration of the property tax more largely in the hands of the governments for whose benefit it is now chiefly imposed.

Next in importance as a source of revenue to the municipalities are the license taxes mentioned in paragraph four. These taxes consist of specific license taxes upon businesses and occupations such as are levied in many other Southern States of the Union. It was not originally intended that these taxes should be a permanent feature of the municipal revenue system, and the power to impose them was consequently limited by the act cited to the fiscal year ending June 30, 1902. It was found, however, that the municipalities, for the present at least, could not do without this income, and the power to impose them was therefore extended indefinitely by the municipal law. This power, however, it should be stated, is subject to the very important limitation that each year the schedules for such taxes must be approved by the executive council before they become effective; and this body does not hesitate to revise the schedules submitted to it when in its opinion the rates proposed are inequitable or excessive. The imposition of these taxes is of course optional with the municipalities, but almost all of them avail themselves of the privilege.

The remaining items of income do not need any special comment, as they represent the usual miscellaneous sources of income of a municipality. It should be stated, however, that the income from municipal slaughter houses, markets, etc., is usually of relatively greater importance in the Porto Rican municipalities

than in towns of the same size in the United States. In practically all cases the markets, slaughter houses and cemeteries are owned and run by the municipality. The same is true of the water works where there are any.

The second field into which we have divided the subject of municipal finance relates to the limitations upon the powers of local governments regarding the expenditure of their funds. Under the old system practically no limitations existed except as contained in the general provision that the insular government, acting through its treasurer, could refuse to approve any budget that provided for an expenditure that was absolutely illegal. There was no check, however, upon extravagance or misapplication in the appropriation of municipal funds. The result, as has been stated, was that, on the one hand, the municipalities expended their income in the payment of extravagant salaries or the remuneration of useless officers, while, on the other, they absolutely failed to make due provision for many public needs, such as the maintenance of roads, the support of schools, care of the public health, etc.

In reorganizing local governments this failure on the part of municipalities had to be taken into account. On the one hand, therefore, special laws have been passed, as has been described, making it obligatory upon the municipalities to pay over a certain percentage of their receipts on account of general property taxes to special boards for use by them for educational and road improvement purposes. In the same way the general municipal law requires each

municipality to make provision for a health officer and the payment to him of a minimum salary, in order to make sure that this important matter of the care of the public health shall receive proper attention. On the one hand, it will have been noticed in the enumeration of the officers for which provision is made by the law, that the maximum salaries that can be paid is in all cases carefully fixed. There is no doubt that in theory it is desirable that these limitations upon the powers of self-government should be restricted to as slight an extent as possible. It was impossible, however, for those who were responsible for the framing of the law not to recognize that the liberty that had been enjoyed by the municipalities in the past had been grossly abused, and that some measures should be taken to prevent similar abuses in the future if the local governments were properly to perform the essential duties for which they exist. As time goes on, and the progress that is already to be noted in the manner in which governmental affairs are managed has proceeded somewhat further, it is possible that this restriction upon the freedom of action of the municipalities may be lessened or entirely removed.

The power to incur bonded indebtedness constitutes one of the most important features of any system of municipal law. In Porto Rico this matter is regulated by special act, passed at the first session of the legislative assembly in 1901, entitled "An act to authorize and regulate the issuance of bonds by the cities (municipalities) of Porto Rico." This act provides that upon compliance with its provisions, municipali-

ties having a population of ten thousand inhabitants or over may incur bonded indebtedness for any or all of the following purposes: constructing water works, sewers, public buildings, bridges, grading and opening streets, or other necessary improvement, or for the purpose of funding and taking up and making payment of their floating indebtedness and liabilities." The total amount of bonded indebtedness that may thus be incurred shall not in any case exceed seven per cent of the assessed value of property for purposes of taxation in the municipality. The bonds when issued must bear interest at a rate not in excess of six per cent per annum, and be redeemable in ten and payable in twenty years. A sinking fund for the payment of the principal upon its maturity must be provided for, and a tax be levied sufficient in amount to realize the sum required for meeting all interest and sinking fund charges as they become due. The most important provision of the act, however, is that which provides that no action shall be taken until the executive council has approved not only the purposes of the loan, but the form of the bond, the rate of interest and all the other requirements of the act. Full power has thus been retained by the insular government to ensure that indebtedness will not be foolishly contracted, and that proper safeguards will be provided for the protection of the credit of the municipalities. Up to the present time only four municipalities, San Juan, Ponce, Mayaguez and Arecibo, the four most important municipalities in the island, have sold bonds under this act. These bonds are all dated January 1, 1902, and are for $600,000, $200,000,

$200,000, and $100,000, respectively. In all cases provision has been made for meeting the interest and sinking fund charges through the levying of an additional tax upon property.

This law authorizing bonded indebtedness has been supplemented by another act, passed in 1904, which permits the insular government to make loans to municipalities and school boards from funds in its treasury under such conditions as regards interest and repayment as the executive council deems fit to impose. The purpose of this act is to take account of those cases where a municipality is in urgent need of a larger sum than it can vote in its annual budget, but which is not of sufficient amount to warrant the expense and trouble of issuing bonds in regular course. Such a contingency would arise, for example, where ten or twenty thousand dollars are needed for the erection of a schoolhouse, the repair or reconstruction of a slaughter house, etc. In such cases it would be equally beneficial to both the insular government and the municipality for the former to loan to the latter the sum required under the condition of its repayment in annual installments. The former would receive a return on its investment by requiring a moderate rate of interest, while the latter would obtain the money needed without trouble and on much better terms than could be obtained in the open market. Under this law loans have already been made to a number of municipalities and school boards. As the insular government collects the property tax for these bodies, it has a perfect security that its advance will be repaid through its power to deduct its repay-

ments as they fall due from the proceeds of the taxes collected on their behalf.

In connection with this subject of bonded indebtedness mention should also be made of the operations had under another act by which the municipalities were given the authority to convert their floating indebtedness into certificates of indebtedness running for a period not to exceed five years. At the time of the passage of the new municipal law, the majority of the municipalities had upon their books outstanding and unpaid obligations, many of them representing claims running back a number of years, which it was impossible for them to provide for in a single year. To meet this situation, and to allow the municipalities to begin operations under the new law with all obligations provided for, a law was passed authorizing all municipalities desiring to do so to issue certificates of indebtedness in payment of all claims against them outstanding and unpaid July 1, 1902. These certificates were to bear interest at three per cent per annum, payable at the time of the redemption of the certificates, and were to be taken up and paid by the municipalities issuing them within five years, one-fifth of the certificates, according to the priority of the claims represented by them, being redeemed each year. This system has worked with perfect satisfaction. Almost all of the municipalities having debts have availed themselves of its provisions. The payment of these certificates in the case of a number of the municipalities has constituted a heavy charge upon their budgets, and until all of their certificates are paid these municipalities

will be considerably embarrassed for funds for current expenditures. In a certain sense, therefore, the municipalities may be said to be going through a period of liquidation.

The fourth field into which we have divided the study of the financial system of Porto Rican municipalities relates to the manner in which the annual budgets of the municipalities shall be prepared and voted. Under the Spanish system, which continued in force until the adoption of the new municipal law in 1902, each municipality prepared, during the closing months of each fiscal year, a budget setting forth its estimated receipts and its proposed expenditures for the ensuing year. It was obligatory upon the municipalities that the two sides of the budget should balance. The budget as thus prepared had to be submitted to the insular treasurer for his approval. The power thus possessed by the insular treasurer over municipal budgets was, however, more apparent than real. In passing upon the budgets, his only authority lay in seeing that they balanced and that no law was actually violated through the imposition of an illegal tax, through the failure to provide for a legal obligation, or through the making of an appropriation for an illegal purpose. He was not empowered to pass upon the wisdom or folly of proposed measures. He could not direct the correction of most manifest abuses, nor check extravagance in appropriations. Moreover, his power to see that the municipal budgets balanced was of no real efficacy, as it rested upon the municipal authorities to estimate the yield of taxes proposed, and such estimate could not be revised by

him. The municipal authorities were thus always able, no matter what the amount of appropriations provided for, to make the budgets balance by putting such estimate as they pleased upon the yield of the taxes imposed. It will be seen from this that the authority possessed by the treasurer to approve budgets merely resulted in a vexatious interference from above and a weakening of the sense of power and responsibility on the part of local officials, while constituting but to a slight extent a real power to supervise municipal expenditures. Another very unfortunate abuse existed in the fact that municipalities exercised the right to vote supplemental taxes and expenditures. During the entire year they were constantly levying additional dues or licenses and providing for new expenditures, with the result that taxpayers never knew when they would be called upon for an additional impost of some sort or other.

The new municipal law changes this system absolutely. It provides, in the first place, that each municipality shall provide in an annual budget for all taxes that will be levied and all expenditures that shall be made during the ensuing fiscal year, and that thereafter no additional taxes shall be imposed nor further expenditure of money authorized. In cases of absolute necessity, however, a municipal council may, upon the approval of the secretary of Porto Rico, direct the transfer of the whole or part of an appropriation from one head to another. The most radical change in the system is that whereby the requirement that all budgets shall be submitted to the treasurer of Porto Rico for his approval before becoming effective

is repealed. This provision, as stated, had as its result the weakening of the sense of responsibility while providing for no real supervision. To have modified it so as to have made the power of the treasurer a real one would have meant practically a denial of self-government to the municipalities. The only alternative was to confer upon the municipal authorities a more complete control, and to bring home to them in some way a sense of their obligations in respect to this matter. While it is certain that the municipalities will in cases use this additional power improperly, the conferring of it is a step that had to be taken if anything approaching local self-government was to be built up in the island.

While freedom of action regarding municipal expenditures is thus given to the municipalities, this freedom is dependent upon the municipalities living up to all of their legal obligations. It is imperative that the insular government while extending local authority shall at the same time retain to itself sufficient power to prevent local bodies from violating their legal obligations or failing to pay all of their just debts. The new law thus provides that, in the framing of their annual budgets, each municipality shall, first of all, make provision for the meeting of any deficit that may have resulted from operations in prior years, all expenditures for which it is obligated in consequence of contracts already entered into, all payments imposed upon it by the laws of Porto Rico, and all payments on account of final judgments rendered against it by any competent tribunal. As long as a municipality faithfully does this, the insular govern-

ment cannot intervene, but if in any budget it fails to do so, then the law requires that its next budget shall be submitted to the treasurer of Porto Rico, who is given full power to make such changes in the budget as he deems necessary either in the way of reducing or eliminating items of expenditure or in raising the rates of proposed taxes, licenses or other levies, for the purpose of insuring that the obligations of the municipality will be met. It will be observed that according to this provision municipalities are to be treated exactly as are ordinary corporations. Within the limits of their charters they are allowed full freedom of action as long as they meet all of their legal obligations, but as soon as they default in any respect the State steps in—in the one case by the intervention of the treasurer, and in the other by the appointment of a receiver under the authority of the courts—to manage the affairs of the defaulting corporation until all legal requirements have been fulfilled. The essential contrast between the old and new system thus lies in the fact that under the old system the insular government intervened in every case, whether the municipality had acted wisely and properly or not, while under the new system such intervention takes place only in the event the municipalities fail to meet all of their legal obligations. For the first time, therefore, municipal officers are put in a position where they must feel a real responsibility, and the central government is relieved of much vexatious work while still retaining adequate power to intervene should the maintenance of public credit so require.

Probably the best single feature of the new municipal law is that by which careful provision is made for holding municipal officials rigidly responsible for the manner in which public funds are accounted for and disbursed. This is done through a provision which confers upon the treasurer the power to prescribe the manner and form in which the municipal treasurers and comptrollers shall keep their books of account, and to require of them such annual and other reports as he deems desirable. In pursuance of this power, the treasurer of Porto Rico has formulated and put into operation a complete system of municipal accounting and reporting that is uniform throughout the island. This system prescribes the exact form of every book, receipt or voucher that is to be made use of, the form in which reports must be rendered and the manner in which every financial transaction must be performed. To enforce these provisions and to ensure that the financial affairs of the municipalities are being honestly and properly administered, the treasurer has the power, through his agents, at any time to make an examination and audit of the accounts of any local official. In making such examinations the treasurer, or his agent, has full power to require the production of all cash, papers or securities, and to compel the attendance and testimony of any person believed to possess information of value. Refusal to give such testimony is a misdemeanor and punishable by fine or imprisonment. If any irregularity or negligence is found to exist on the part of any official the matter must be reported to the governor of Porto Rico, who has full authority

to suspend or remove the delinquent, and to direct the attorney-general of Porto Rico to institute such civil and criminal proceedings as may be necessary for the protection of the financial interest of the municipality or island. The power on the part of the treasurer to prescribe the methods of accounting and reporting extends to the local school boards and boards of road supervisors. In all respects, therefore, it has been possible to reduce the financial administrative machinery of the local bodies to a scientific and uniform basis. It is hardly necessary to comment upon the importance of these provisions. Uniform municipal accounting and reporting has long been one of the chief objects striven for by those interested in improving methods of local government. In accomplishing this object Porto Rico has put itself in the front rank of commonwealths which are moving forward in the direction of better municipal government. It is now possible for the first time to follow year by year the exact sources from which the municipalities of Porto Rico derive their income and the objects for which it is expended. For the first time also it is possible to secure in a very large measure honesty and a reasonable degree of efficiency in the management of local funds.

In enumerating the defects of the Spanish system of local government in the island, special mention was made of the fact that the small municipal districts maintained as elaborate a governmental machinery as those having within their limits important cities or towns like San Juan or Ponce. To remedy this evil and lessen the cost of government, an act was passed

in 1902 at the same time that the general municipal law was enacted, providing for the consolidation of twenty of the smaller or less populated municipalities with the remaining forty-six. It cannot be said that this act has given very good results. In practical operation these districts, although paying their share of the taxes, have been almost entirely neglected in the employment of the funds so raised. Neither has the economy realized been as great as was expected. It is now recognized by many that the passage of this act was probably a mistake and that the result aimed at could have been much better obtained by dividing the municipalities into two or more classes, according to their importance, and giving to the less important class a very simple form of government, such, for example, as that enjoyed by counties in the United States. There is a strong demand for the repeal of this law, and it is one of the possibilities of the future that this will be done and provision be made for a more simple form of government for the weaker municipal districts along the lines just suggested.

Insular Control. In the course of the foregoing description of the steps that have been taken to reorganize local government in Porto Rico, incidental reference has been made to the most important consideration involved in the whole problem; that, namely, of the relations that exist between such governments and the insular government; or, to speak more accurately, of the extent to which the latter in delegating powers to local bodies has seen fit to reserve to itself a super-

vision or control over the manner in which such delegated powers shall be exercised. The question here involved constitutes the very essence of any system of local government, as the nature of action taken necessarily determines the essential character of the government created. In the case of Porto Rico, this question has a greater significance, and offers greater difficulties of proper solution than are presented when action is contemplated by any of the States on the mainland. This is due to the fact, more than once commented upon, that the Porto Ricans have not had that experience and training in the past which is necessary to give to them a full appreciation of the duties and obligations which the possession of governmental powers entails. All experience that was available, therefore, warranted the position that unrestricted powers were granted to the local authorities they would be abused to a greater or less extent. It was imperative, therefore, that in reorganizing the system of local government for the island, the insular government in some way or other should retain the power to prevent any gross abuse of authority and to secure a reasonable degree of efficiency in the administration of affairs.

The problem confronting the American government was to devise a system under which the grant of self-government in local affairs should be a real one, without at the same time surrendering that measure of control which circumstances might make necessary. This problem was met by changing the entire theory upon which the relations between the insular and municipal governments had been in the past adjusted. The old

system, under which the consent or approval of the central government had to be obtained by the municipalities before action even in trivial cases could be taken, and under which the central government had the right of its own initiative to intervene and direct what in many cases should be done, was abandoned, except in the two cases where a municipality desired to contract indebtedness or to levy special license taxes. Instead, the central government reserves to itself merely the right to act as a tribunal of appeal or superior authority to correct abuses. The importance of this change of method of control is evident. Under the new system the municipalities have a definite field of activity and within that field can take such action as they deem proper, so long as express provisions of law are not violated, or manifest injustice or inequitable treatment of taxpayers or others is not committed. The authority of the insular government is thus one of control and supervision in the proper sense of the word instead of intervention and interference.

Owing to the importance of this subject, it is of interest to recapitulate the precise manner in which this control or supervision is exercised and the particular branches of the insular government in which it is located. We have already described at some length the authority possessed by the insular treasurer in respect to the requirement that municipal accounts shall be properly kept, and his power to intervene when a municipality fails to make proper provisions for the payment of its just obligations. The former of these powers, it will be observed, carries with it no real intervention in the sense of determining what a munici-

pality shall or shall not do, but merely makes it obligatory that a certain system of bookkeeping shall be followed and a due accountability be had, and the latter only comes into play when the municipality itself is responsible by its failure to make proper provision for the payment of its just obligations.

Apart from the authority of the insular treasurer over financial affairs, the insular government exercises a power of control over the administration of municipal affairs through the office of the secretary of Porto Rico. This power is granted in the final section of the general municipal law, which reads as follows:

> That any taxpayer or person resident within the limits of a municipality who believes himself to be injuriously affected or who believes that the general interests of the municipality have been injured by any ordinance, resolution, or act of the council or mayor, or of any municipal officer, may object thereto by suit in a court of competent jurisdiction, or by direct appeal to the secretary of Porto Rico, and the secretary of Porto Rico may himself take cognizance of any such act upon the matter coming to his attention in any way and decide the same in like manner as if direct personal appeal had been made to him. Such appeals to the secretary of Porto Rico shall be in writing and against his decision, which shall also be in writing, recourse may only be had upon application to the courts of justice. He shall have power to call upon the treasurer or the executive council for a report in those cases which relate to public funds, to make all orders he may judge proper, and direct all such investigations as may be necessary for the protection of the public interests of the municipalities and the private ones of the appellants.

Nothing short of absolute necessity can justify such a sweeping grant of power as this. This necessity lies in the deep-rooted tendency that the Porto

Ricans have inherited from the old régime to use public authority in an arbitrary manner, and to subordinate public to private ends. Party feeling is so intense that it is apparently impossible for those in power to refrain from using their positions for the purpose of aiding their friends and injuring their enemies. It is imperative, therefore, that until a radical change in this respect can be effected, that the insular government should have the power to prevent and correct abuses. Otherwise in many cases municipal government would certainly degenerate into a system of positive tyranny. It is true that the natural remedy against such abuses would seem to be that of recourse to the courts. So many of the acts, however, fall within the province of legislation or executive discretion, where no provision of law is directly violated, and so unavoidable are the expenses and delays of judicial procedure, that dependence upon this agency would in many cases result in a practical denial of justice. Only through some system by which prompt and decisive action can be taken is it possible to meet the needs of the situation. That this is the opinion of the secretary who has had the administration of the law is clearly apparent from the following extract from his report to the governor in 1902:

"A careful study," he writes, "of the entire situation confronting the insular government, as an actual experience of two years under civil government has developed it, leads to the conclusion that for an indefinite period at least, it will not only be the part of wisdom, but it will be necessary to the best interests of the people as well as the government to continue to provide a direct, speedy, and what is even more impor-

tant, an economical method for the determination of those questions of administration of municipal affairs which so constantly arise and require immediate solution. . . . Unfortunately the practice of directing the authority lodged in municipal affairs to improper political uses has continued to prevail in many instances, and while this department has endeavored in every possible way to impart to the municipal officials not only the wisdom but the absolute necessity of conducting the affairs of their various municipalities impartially and without regard to party politics, it is still one of the most serious problems which confront our administration, and one which a considerable period of time and constant effort alone can hope to overcome."

Great as are the powers of the secretary, here too it should be recognized that they are not such as to give to the insular government the right to interfere in advance and compel the municipalities to take action of any particular character, but only such as are exercised to correct evils, and this use, therefore, only takes place when the municipal authorities have made it necessary. This power, moreover, is in practical operation a negative rather than a positive one. Its chief efficacy consists in its deterrent effect. The fact that it can be appealed to at any time is in itself sufficient to prevent most of the grosser abuses that have characterized municipal government in Porto Rico in the past.

Mention finally should be made of still one other manner in which a control is exercised over local affairs by the insular government. This consists in the power possessed by the governor of Porto Rico to remove municipal officers for misconduct and to appoint other persons to serve in their places until the next regular elections.

It will be seen from the foregoing that the supervision and control over municipal government by the insular government is logically distributed, according to the nature of the control to be exercised, among the three offices of the treasurer, the secretary and the governor. The treasurer is responsible for seeing that the municipalities keep their accounts in proper form and that the local treasurers and comptrollers perform their duties properly. The secretary exercises a general control over the legality and justice of the actions of the municipalities and acts as the authority to whom appeal can be made for the redress of specific grievances or for the prevention or correction of abuse of power. The governor is responsible for seeing that only honest and capable men are permitted to hold office.

While the government of Porto Rico has by the action which has been described evolved a thoroughly logical system of local government, it cannot be said that the general problem of local government on the island has been solved. There still remain various directions in which action is very desirable. Chief among these is that of providing for a simpler and less expensive system of government for the smaller municipalities, and when this is done, of returning their autonomy to the municipalities which were merged in others by the act of 1902. On the other hand, it is desirable that a somewhat more complete and independent government be given to the three or four cities proper of the island. It also is still a matter of uncertainty whether the system of local school boards and boards of road supervisors will give satisfactory

results, or whether the objects that are sought by their constitution cannot be better obtained in some other way. Changes can also be made with advantage in the system of local taxation especially with reference to that feature having to do with the levying of special business or license taxes. Finally a very great improvement would result from a consolidation into one harmonious municipal code of the provisions relating to the municipalities that are now scattered through a large number of laws.

CHAPTER VI

GOVERNMENT OF THE PHILIPPINES: INSULAR GOVERNMENT

To any person desiring to make a careful study of the problem confronting the United States in the framing of a system of government and administration for the Philippine Islands, the fact that must first impress him is the complexity of the questions presented and the difficulties involved in their solution. Here, even more than in the case of Porto Rico, the devising of a form of government for the Philippines is not a single problem to be met merely by the enactment of an organic law. The passage of such a law constitutes merely the first and, in many respects, the simplest step. The Philippine Archipelago is inhabited by peoples and races representing almost every stage of development, from complete savagery to comparative civilization. The form of government that would be adapted to one would be totally unsuitable for another. The general problem of providing a government for the Philippine Islands thus presents almost every possible question relating to colonial government. To meet this situation it has consequently been necessary to elaborate, not one, but various, systems of government, each in a large degree constituting a distinct type of government and to-

gether illustrating forms of government running all the way from that of direct and almost autocratic action by a military or civil governor, without the intervention of even an advisory council, to that where the people are given a large measure of local autonomy and participation in the management of their public affairs. In the study that follows, therefore, we shall be called upon to describe a number of distinct forms of government, those, namely, by which provision is made for the government of (1) the archipelago as a whole, (2) the provinces occupied by the more civilized tribes, (3) the provinces which are inhabited by less advanced tribes, (4) the districts occupied by non-Christian or savage tribes, (5) the municipal districts within each of these classes of provinces, and (6) the city of Manila, to which a special form of government has been given in order to meet the peculiar conditions that there prevail.

In the second place, the student must be equally struck with the fact that he is called upon to study a work that is not yet completed; that he must examine institutions that to a certain extent may be said to have a tentative character, or that at least are certain to undergo important modification in the early future as experience in their operation is acquired. In consequence of this he will at once realize that a bare description of the different forms of government as they exist at the present time will utterly fail to afford a proper or satisfactory account of real conditions. Such an account can only be secured after some idea has been obtained of the peculiar conditions that have had and still have to be met, of the character of the

country and people to be dealt with, and of the various steps that have been taken in establishing the system that now prevails. In this way only is it possible to appreciate both the provisions of law regarding the government of the islands, and the reasons that underlie and have dictated them. Our first effort, therefore, shall be to give an historical account of all that has been done by the United States since the first occupation of the islands down to the present time in regard to the administration of civil affairs. This done, we shall then be in a position to consider the character of this action and the motives dictating it.

Events Leading up to the Establishment of Civil Government. War with Spain was declared April 21, 1898, and the battle of Manila Bay, by which the Spanish fleet was destroyed, took place May 1 following. It was not, however, until August 13, 1898, when the city of Manila was occupied by the joint forces of the army and navy, that the problem of the administration of the civil affairs of the islands presented itself. At that time, of course, all authority, civil as well as military, was vested in the hands of the commander of the United States forces, and the first government was therefore a military one, such as has been described in our introductory chapter. Owing to the condition of hostilities that existed with Spain and which later, on February 4, 1899, broke out with the Filipinos themselves, led by Aguinaldo, the work of civil administration by the United States had at first to be restricted within very narrow limits. Immediate steps, however, were taken for the government of Manila itself.

Provost-marshal and other courts were organized for the administration of justice, both criminal and civil, and the administrative bureaus which were found in existence in the capital were continued in operation and reorganized. As additional territory was brought under the control of the United States forces similar action was taken in reference to it, and the additional task was undertaken of providing for the education of the people and the organization of a system of government for the administration of local affairs. The action of the military authorities in the latter direction was particularly important, but its consideration will more properly fall in the description of the work done in respect to the organization of local government in the islands that is given in a subsequent chapter.

Valuable and well-directed as was the work of the military authorities, both President McKinley and Secretary Root recognized the desirability of modifying the system of purely military rule as rapidly as circumstances would permit. To this end the President, in December, 1898, or a few days after the treaty of peace with Spain was signed and before hostilities with Aguinaldo had broken out, gave formal instruction to the secretary of war to proceed as rapidly as possible in the elaboration and application of a scheme of civil government for the islands of such a character that the Filipinos would enjoy under it the largest practicable measure of individual liberty and civil rights, and be governed by civil rather than military methods of procedure. In other words, while the government would still remain legally a military one, the

secretary of war was instructed to see to it that the military commander should as far as possible perform his functions as civil governor through the ordinary instruments of civil administration.

As a further move in the direction of the substitution of civil for military government, the President a few days later, on January 20, 1899, appointed what was known as the "First Philippine Commission," with instruction to proceed at once to the islands for the purpose of making full investigation and report upon conditions there prevailing and of recommending action that should be taken for their civil administration. This commission was composed of Jacob F. Schurman, President of Cornell University, Rear Admiral George Dewey, Major General Elwell S. Otis, Hon. Charles Denby, and Professor Dean C. Worcester. It promptly assembled at Manila and entered upon its work. It made a preliminary report of a few pages on November 2, 1899, and later a final report in four volumes on December 31, 1900. These reports are valuable not only as giving a full description of the islands, their resources, inhabitants, customs, forms of government in the past, etc., but especially as presenting a statement of the desires of the Filipinos themselves regarding their future status, and the personal opinions of the commission relative to the capacity of the Filipinos for self-government, and the extent to, and the best means by, which this grant of self-government could with safety be made.

Following the preliminary report of this commission, the President took the first step in the direction

of the actual substitution of civil for military methods of administration. This was done through the creation, on March 16, 1900, under the authority of the secretary of war, of a body which was known as the "Second Philippine Commission" to exercise the greater part of the powers in respect to the administration of civil affairs in the islands that up to that time had been exercised by the military general commanding. These powers included all those of a legislative character, the right to provide for the creation of judicial tribunals, and the power to make all necessary appointments for the proper administration of the civil, judicial and educational affairs of the government.

The legal position of this commission as a legislative and executive body, though acting under the direction of the secretary of war, and thus a part of the purely military government, is an exceedingly interesting one. As a means by which could be secured the benefits of civil administration without surrendering the authority possessed under a military form of government, this device of a commission with civil powers was an exceedingly clever one. The authority and reason for the action of the President in creating this body are excellently stated by Secretary Root in one of his annual reports. Commenting upon the authority of the President to create the commission and invest it with the duties that have been mentioned, he writes: "The sole power, however, which the President was exercising in the Philippine Islands was a military power derived from his authority under the Constitution as commander-in-chief of the army. The

question presented was how in the exercise of the President's military power under the Constitution to give the peaceful people of the Philippines the real benefit of civil government. The question was answered by an analysis of the military power, which, when exercised in a territory under military occupation, includes the executive, judicial and legislative authority. It not infrequently happens that in a single order of the military commander can be found the exercise of all three of these different powers . . . and that it is, indeed, the combination of all of these powers in a single individual that constitutes the chief objection of any unnecessary continuation of the military government. It was, accordingly, determined that as the fundamental step of giving the substance of civil government to the people of the Philippines there should be a separation of these powers so that the executive, the legislative and the judicial powers should be exercised by different persons throughout the classified territory, and as it is well settled that the military power of the President in occupied territory may be exercised through civil agents as well as military officers, it was determined that that part of the military power which was legislative in its character should be exercised by civil agents proceeding in accordance with legislative forms, while the judicial power should be exercised by particular establishments and regulated by the enactments of legislative authority."

In another place, commenting upon the manner in which the commission performed its legislative function, Secretary Root writes:

"While the President vested and could vest in it [the Philippine Commission] no greater legislative authority than the military commander previously had, it has exercised that authority in accordance with legislative forms. Its sessions have been stated and public. Its legislative enactments have been publicly introduced and printed in the form of bills. When of general public interest, they have been made the subject of public hearings before committees, which the people of the islands have fully attended and at which their views have been fully expressed. The ordinary legislative opportunities for amendment have been afforded, and, finally, the amendments and the bills have been publicly debated and voted upon, and the bills passed have become in effect statutes subject to the approval of the secretary of war, which has not in any case been withheld. The statutes thus enacted have become the law of the land in the Philippines and bear the same relation to governmental action and public rights of the archipelago that the statutes enacted by Congress and the State legislatures in the United States bear within the territory for which they are enacted. Under this system the Philippine Islands have had the practical advantages of having the legislative separated from the executive authority; of having laws matured under the influence of public discussion and deliberation; of having the laws when adopted certain, permanent and known, and of having the moneys of the insular government expended only pursuant to previous appropriations made by law, so that the official accountability could be enforced by a rigid system of audit, listing the

accounts of all disbursing officers from the lowest to the highest by reference to a fixed standard of lawful authority."

It was extremely fortunate that the power of the President as commander-in-chief of the military forces permitted this construction, as by it it was possible to avoid any abrupt break, and gradually to substitute civil for military methods of administration.

This second commission consisted of Judge William H. Taft as president and Messrs. Luke E. Wright, Dean C. Worcester, Henry C. Ide and Bernard Moses as associate members. It received its formal instruction from the President through the secretary of war on April 7, 1900. These instructions were incorporated in full in the annual message of President McKinley to Congress on December 3, 1900, and constitute in every respect a remarkable state paper. In the documentary history of the government of dependent territories by the United States it will always occupy a leading place side by side with that of the Northwest Ordinance. Its significance lies in the fact that in its few pages is formulated, in the most authoritative way, the whole theory of the American people in respect to the government of dependencies. In it is solemnly enunciated the ploicy of the United States that in framing a scheme of government for the islands, and in legislating in regard to them, the United States will have solely in mind the welfare of the islands themselves, and, furthermore, that it is the deliberate policy of the United States to give to the people of the islands the largest measure of par-

ticipation in their own government which they are fitted to exercise.

"In all the forms of government and administrative provisions which they are authorized to prescribe," the instructions read, "the commission should bear in mind that the government which they are establishing is designed not for the satisfaction or the expression of our theoretical views, but for the happiness, peace, and prosperity of the people of the Philippine Islands, and the measures adopted should be made to conform to their customs, their habits, and even their prejudices, to the fullest extent consistent with the accomplishment of the indispensable requisites of just and effective government."

Again in another place, in speaking of the establishment of municipal government, the instruction is given that the commission shall:

Devote their attention in the first instance to the establishing of municipal governments in which the natives of the islands, both in the cities and in the rural communities, shall be afforded the opportunity to manage their own local affairs to the fullest extent to which they are capable and subject to the least degree of supervision and control which a careful study of their capacity and observation of the workings of the native control show to be consistent with the maintenance of law, order and loyalty. . . . In the distribution of powers among the governments organized by the commission the presumption is always to be in favor of the smaller subdivision, so that all of the powers that can properly be exercised by the municipal government shall be vested in that government, and all of the powers of a more general character which can be exercised by the departmental government shall be vested in that government, and so that in the governmental system which is the result of the process the central government of the islands, following the example of the distribution of powers between the States and the national government in the United

States, shall have no direct administration except of matters of purely general concern and shall have only such supervision and control over local governments as may be necessary to secure and enforce faithful and efficient administration by local officers.

The commission proceeded immediately to the Philippines, but did not formally assume its legislative functions until September 1, 1900. The intervening months were devoted to a tour of the islands for the purpose of studying general and local conditions.

Although by the creation of this commission the form of government was given a largely civil character, legally that government still remained, as has been stated, a military one. There was a strong desire, however, both in the Philippines and in the United States, that even the form of a military government should be discontinued as soon as possible. This question came under consideration by Congress in the formulation of the general appropriation bill for the support of the army for the fiscal year ending June 30, 1902, and as the result of such consideration there was added to this bill an amendment, known as the "Spooner Amendment," the effect of which was to cause a definite separation of the exercise of military and civil powers in the islands. This amendment follows almost exactly the wording employed in the act by which provision was made for the first government of the Louisiana Purchase and later of Florida. It reads:

All military, civil and judicial powers necessary to govern the Philippine Islands . . . shall, until otherwise provided by Congress, be vested in such person and persons and shall be

exercised in such manner as the President of the United States shall direct for the establishment of civil government and for maintaining and protecting the inhabitants of said islands in the free enjoyment of their liberty, property and religion.

It will be seen that this amendment did not necessitate any modification of the existing form of government. It did, however, make a fundamental change in respect to the legal authority in virtue of which such government was being carried on. Thereafter the President, in making appointments to office and providing regulations for the government of the islands, would act in his civil capacity as President of the United States and not as commander-in-chief of the military forces, and the administration of civil affairs would consequently be by a civil instead of a military government.

The act containing this amendment passed Congress and was approved by the President March 2, 1901. On July 21, 1901, the President formally designated William H. Taft, President of the Philippine Commission, as civil governor of the Philippines, his appointment to take effect July 4, 1901. In his letter of appointment he directed that the new civil governor should, until otherwise ordered, "exercise the executive authority in all civil affairs in the government of the Philippine Islands heretofore exercised in such affairs by the military governor of the Philippines," and that he should have the power, with the advice and consent of the commission, to appoint civil officers the appointment of whom hitherto had been vested in the military governor or the commission.

The inauguration of civil government in the Phil-

ippines, therefore, legally speaking, dates from July 4, 1901, although, as has been shown, the islands had enjoyed what was substantially a large measure of civil government since September 1, 1900, when the second commission first entered upon the performance of its duties as a legislative body. On this date there was transferred to the commission by the military governor all of the civil executive authority that had been previously exercised by him in respect to those provinces in which order had been restored and methods of civil government had been put into practice. In these provinces the civil power became supreme and the civil governor the chief executive. Within them the military force could not be offensively employed except where the commission requested its intervention for the preservation of peace. In the other provinces where hostilities still continued and local or provincial governments had not been organized the military governor still continued the supreme authority. The number of these provinces, however, constantly diminished during the next twelve months, so that by the middle of 1902 all of the Philippine territory except what is called the Moro Province was taken from under military control and placed under the civil governor.

The further organization of the civil government thus established was effected by two subsequent orders of the President: one taking effect September 1, 1901, which added to the commission three Filipino members and provided for the creation of four executive departments, to be presided over respectively by the four American members of the commission; and one

dated October 29, 1901, which created the office of vice-governor and designated as its first incumbent Commissioner Luke E. Wright.

Although the government of the Philippines was thus wholly changed from a military to a civil one, the character of this government rested solely upon the discretion of the President, who, in virtue of the powers conferred upon him by the Spooner Amendment, could change the form of the government at any time. The Spooner Amendment was evidently but a temporary expedient to permit the establishment of civil government in the Philippines pending the time required by Congress to consider and enact a more permanent form of government. Such action took place the year following, Congress, on July 1, 1902, passing an organic act for the government of the archipelago under the title of "An act temporarily to provide for the administration of affairs of civil government in the Philippine Islands and for other purposes." Four days later, on July 4, 1902, the final step in the creation of a civil form of government was taken by the abolition of the office of military governor, and the inauguration of Judge Taft as civil governor, who thus became in all respects the chief executive of the Philippine Islands.

Conditions of the Problem of Civil Government in the Islands. Before entering upon a description of the form of government thus provided, brief attention should be given to certain general principles which had been definitely adopted by Congress and the administration at Washington in relation to the more

fundamental considerations involved in the provision of a government for these islands. The adoption of these principles was the result of the detailed and careful examination and report regarding the conditions to be met that had been made by the two Philippine commissions and by the military and civil authorities who had been entrusted with the administration of the island's affairs.

The first point that had to be settled was whether the archipelago should be given a single central government embracing all the islands, with subordinate provincial and municipal governments, or whether the effort should be made to establish a number of different and more or less independent governments for the different islands or tribes. The former of these policies was unhesitatingly decided upon. At the time there was some feeling that possibly the best action would be to form a confederation of states with certain delegated powers to a central government similar to our own Union. There was, however, no parallel between the situation in the Philippines and that existing at the time of the adoption of the Constitution by the original thirteen States. The latter were already commonwealths in full successful operation; in the Philippines there was no such thing as a Tagalog, Viscal, Viscayan, or other state. Even the numerous provinces into which the islands were divided had never had any experience as separate states nor had they ever enjoyed any real self-government. Ever since the first occupation of the islands by Spain their affairs had been administered through a general government with little or no intervention or exercise of

authority on the part of the inhabitants. There was thus no historical basis for the creation of a confederation of separate commonwealths. Apart from this consideration, moreover, the situation was one evidently requiring the organization of a strong central government which, during the early period at least, should be able to exercise an adequate control over the entire administration of the islands, both central and local. In this way only was it possible to provide that the necessary powers of government should be retained in the hands of the Americans, so that the reorganization of the government as it had existed under Spanish rule could be speedily effected.

The second fundamental point which the commission and Congress were called upon to decide was the determination of the extent to which the people of the islands were qualified immediately to assume the duties and responsibilities of participating in the administration of their own affairs. This was a point concerning which it was of course possible for great differences of opinion to exist. In view of the character of the instructions that had been given to them, and of the evident desire of the American people that all countries under the control of the United States should have conferred upon them the greatest possible measure of self-government, it was certain that the two commissions would in their recommendations go to the furthest limits of liberality in respect to this matter. Their recommendations, therefore, may be taken as the expression of opinion of those who were desirous of making the grant of self-government as broad as circumstances could justify. Writing re-

garding the political capacities of the people, the commission thus reported:

As to the general intellectual capacity of the Filipinos the commission is disposed to rate them high; but, excepting in a limited number of persons, these capacities have not been developed by education or experience. The mass of the people are uneducated. The intelligent public opinion on which popular government rests does not exist in the Philippines, and it cannot exist until education has elevated the masses, broadened their intellectual horizon and disciplined their faculty of judgment, and even then the power of self-government cannot be assumed without considerable previous training and experience under the guidance and tutelage of an enlightened and liberal sovereign power. For the bald fact is that the Filipinos have never had any experience in governing themselves. The laws of the archipelago were all made in Madrid. The judges who interpreted and applied them were all sent out from Spain. And as the legislative and judicial jurisdiction was vested absolutely in Spain, so the executive and administrative branches of the government were, with the exception of the lowest officials, completely in Spanish hands.

After pointing out that the people had a certain nominal voice in the selection of representatives, whose function, however, was almost wholly limited to that of acting in an advisory capacity and liable to be annulled by the Spanish authorities at any time, the commission continued:

This is all the training in self-government which the inhabitants of the Philippine Islands have enjoyed. Their lack of education and political experience combined with their racial and linguistic diversities disqualify them in spite of their mental gifts and domestic virtues to undertake the task of governing the archipelago at the present time. The most that can be expected of them to coöperate with the Americans

in the administration of general affairs from Manila as a center, and to undertake, subject to American control or guidance (as may be found necessary), the administration of provincial and municipal affairs.

Speaking of the same subject, the second Philippine commission in its first report said:

The educated people themselves, though full of phrases concerning liberty, have but a faint conception of what real civil liberty is and the mutual self-restraint which is involved in its maintenance. They find it hard to understand the division of powers in a government and the limitations that are operative upon all officers, no matter how high. In the municipalities in the Spanish days what the friar did not control the presidente did, and the people knew and expected no limit to his exercise of authority. This is the difficulty we now encounter in the organization of municipalities. The presidente fails to observe the limitations upon his power, and the people are too submissive to suppress them. . . . In addition to the defects spoken of there is another: this is an absolute lack of any sense of responsibility on the part of a public officer to the public at large. Office has always been regarded as a source of private profit and as a means of gratifying private desires, either hate or friendship.

In view of these conditions, both commissions deemed it imperative that the first government given to the islands should be of such a character that, at the outset, the final control over affairs should be vested in American hands, and that this authority should only gradually be surrendered as the people of the islands demonstrated their ability properly to exercise larger powers. This opinion is excellently stated by the second commission, after it had had

actual experience in the administration of its governmental functions, in the following words:

> The general theory upon which the commission is proceeding is that the only possible method of instructing the Filipinos in methods of free institutions and self-government is to make a government partly of Americans and partly of Filipinos, giving the Americans the ultimate control for some time to come. . . . We have thought that by establishing a form of municipal government practically autonomous, with a limited electorate, and by subjecting its operations to the scrutiny and criticisms of a provincial government in which the controlling element is American we could gradually teach them the method of carrying on government according to American ideas. . . . How long, it may be asked, must this education be continued before real results will be accomplished? Of course it is impossible to tell—certainly a generation, perhaps two generations, will be needed. . . . As it is now, however, the one fact that is clear above every other is that these people are not—either the small minority of educated people or the very large majority of ignorant people—prepared to establish a government which would hold together for any length of time and which would not in a very short time present all of the oppression and all of the evils which were known in Spanish times.

Finally there remained the practical question of deciding upon the best means by which, while taking due account of these conditions, the desires of the American people relative to the grant of powers of self-government could as rapidly as possible be carried out. In considering this question the first commission made special efforts to determine the extent to which, if at all, aid might be taken of the experience of Great Britain and other nations in the government of territory through native rulers. Under this sys-

tem, as is well known, the nominal administration of affairs is left in the hands of a native ruler, but the latter is given an adviser or commissioner whose advice must be taken upon all matters of importance. The commission found that such a policy was inapplicable to the Philippines, except possibly in one or two cases, such as were presented in the Sulu Islands. The Philippines are in fact, with the exception just noted, a great democracy. There are no rulers or chieftains to whom the people are accustomed to give implicit obedience. Aguinaldo himself certainly occupied no such position. His authority was of recent date and was only maintained by physical force. There was thus no established government through which to act, as was found by the British in India, the Malay Peninsula, Egypt, or other parts of Africa. The essential basis for the protectoral form of government, therefore, did not exist. The commission accordingly recommended that whatever the form of government that might be adopted by the United States, it should be one acting immediately upon the people and not through local rulers.

In a similar way it was found that other methods of administration that were employed by Great Britain and other countries offered few, if any, features that could be adopted with profit by the United States. The commission thus came back to the point that the United States, in its own experience with dependent territory in the past, had developed and employed principles of government thoroughly adapted to the conditions prevailing in the Philippines. Having in view the avowed purpose of the United States to gov-

ern the islands for the benefit of the islands themselves, and to extend to their inhabitants privileges of self-government as rapidly as possible, the commission was unanimously of the opinion that in the Northwest Ordinance, which so many times in the past had furnished the model for action, were also to be found the essential principles that should control in legislating for the Philippines. This decision was arrived at by the commission, and afterwards adopted by Congress, not merely out of the desire thus to preserve the historical continuity of the policy of the United States, or because it offered a scheme of government with which American officials were familiar, but because the ordinance had that essential character which permits of a progressive delegation of governmental powers to local authorities as circumstances justify, while leaving to the central government of the islands, and to the Federal Government at Washington, that measure of control which conditions make necessary.

Government under the Phillippine Commission and Act of 1902. With this general statement of the conditions under which action had to be taken, and the historical steps which have led up to the passage of the law of 1902, we are now in a position to enter upon a consideration of the provisions of the organic act itself, and to describe the work that has actually been done both prior and subsequent to its passage in the way of organizing an administrative system. The act of July 1, 1902, or the "Philippine Act," as it is more usually known, partakes of the character both of an

organic or constitutional act and of general legislation. In addition to making provision for the future government of the islands it thus legislates in regard to a large number of general matters, such as the organization, management and lease or sale of public lands, the preservation, care and utilization of forests, the granting of mining claims, etc. With these latter features we need not here concern ourselves, but may direct our attention exclusively to those provisions having to do with the system of government to be created and its powers.

In studying these features, the first point to be noted is that the act does not, as in the case of the organic act for Porto Rico, outline a complete system of government. Instead, it merely provides that the existing form of government that had been created by the Philippine commission shall continue unchanged, except in a few particulars, until certain conditions are complied with, when this system is to be supplemented by the constitution of a body for the exercise of legislative functions, and by the election of two resident commissioners to the United States. The act thus formally approves the action of the President, in creating the Philippine commission and in conferring upon it executive and legislative powers as set out in the instructions given to it under date of April 7, 1900; in creating the office of civil governor and vice-governor, and in authorizing them to exercise the powers of government to the extent and in the manner set forth in his executive order of June 21, 1901; and later in establishing the four executive departments of the interior, commerce and police, finance and justice, and

public instruction. The only change made in reference to the commission is that future appointments of civil governor, vice-governor, members of the commission and heads of executive departments shall be made by the President by and with the advice and consent of the Senate.

The vital feature of the act is that which provides that the existing government shall be changed as regards the exercise of legislative powers as soon as certain conditions are met. The provisions regarding this point are as follows: As soon as the existing insurrection in the islands is quelled and a condition of general and complete peace is established, it is made the duty of the president of the commission to certify the fact to the President of the United States. The latter is then directed to cause a census of the islands to be taken. When this is done, it becomes the further duty of the President, two years after the results are published, provided a condition of peace still prevails throughout all the territory except that occupied by the Moros and non-Christian tribes, and the authority of the United States is recognized, to direct the commission to call a general election for the choice of delegates to a popular assembly of the islands to be known as the "Philippine Assembly." After this assembly has been convened and organized all of the legislative powers that had previously been exercised by the Philippine commission alone are thenceforth to be vested in a legislature consisting of the Philippine commission and the assembly thus established. The commission is to continue to be composed of seven members appointed by the President,

as in the past, and is to constitute the upper house of the legislature.

The result of these provisions is, as it will be seen, that as soon as the conditions imposed have been met, the Philippines will enjoy a form of government similar in general character to that given to Porto Rico. As in the latter country, all executive powers will be vested in a body of men appointed by the President, who, together with their colleagues, likewise appointed by the President, will also act as the upper house of the legislature, while the lower house will be composed of members directly elected by the people. In two important respects, however, a difference exists. In Porto Rico the governor and the members of the executive council are appointed for terms of four years, and the governor participates in legislation only through the exercise of his veto power. Under the Philippine act, the governor and the members of the commando will be appointed without term, and the governor, in addition to being the chief executive, will be a member and the presiding officer of the commando. As such he will have a vote the same as other members, but no provision is made for the exercise of the veto power by him.

The provisions of the act regarding the composition and powers of the lower house are as follows:

Said assembly shall consist of not less than fifty nor more than one hundred members, to be apportioned by said commission as nearly as practicable according to population; provided that no province shall have less than one member; and provided further that provinces entitled by population to more than one member may be divided into such convenient districts as the said commission may deem best. Public notice of such

division shall be given at least ninety days prior to such election and the election shall be held under rules and regulations to be prescribed by law. The qualification of elector in such election shall be the same as is now provided by law in case of electors in municipal elections. The members of the assembly shall hold office for two years from the first of January next following their election and their successors shall be chosen by the people every second year thereafter. No person shall be eligible to such election who is not a qualified elector of the election district in which he may be chosen, owing allegiance to the United States, and twenty-one years of age.

The act provides that the legislature shall hold annual sessions not to exceed ninety days in length, Sundays and holidays excluded. Special sessions of the legislature, not to exceed thirty days in length exclusive of Sundays, may be called at any time by the civil governor for general legislation or for action on any particular subject as he may designate. The lower house, or assembly, is to choose its speaker and other officers, and the salaries of members and such officers are to be fixed by the legislature. The assembly is given the power to determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member. Provision is made for the contingency of a failure to pass the appropriation bills necessary for the conduct of the government similar to that made in the organic act for Hawaii, it being declared:

That if at the termination of any session the appropriations necessary for the support of the government shall not have been made, an amount equal to the sums appropriated in the last appropriation bills for such purpose shall be deemed to be appropriated; and until the legislature shall act in such behalf

the treasurer may, with the advice of the governor, make the payments necessary for the purpose aforesaid.

The importance of this provision has already been commented upon.[1]

Regarding the exercise of the judicial powers, the provisions of the act in their general effect are to confirm the system of courts that had already been created by the military authorities and the commission, while leaving to the insular authorities general power to make such changes in the system in the future as they desire. The only positive provisions of the act are that the judges of the Supreme Court shall in the future be appointed by the President by and with the advice and consent of the Senate, and the judges of the courts of first instance by the civil governor by and with the advice and consent of the commission, and that the Supreme Court of the United States shall have appellate jurisdiction in respect to all cases coming before the Supreme Court of the Philippines, in which the Constitution or any statute, treaty, title, right or privilege of the United States is involved, or in which the value in controversy exceeds twenty-five thousand dollars. The most notable difference between this provision and those relative to judicial power in the Porto Rican and territorial acts is the failure to make any provision for a special United States district or circuit court.

As in the case of all legislation for dependent terri-

[1] On March 27, 1905, the Secretary of War reported to the President the completion of the census of the Philippines. Consequently, if peace in the islands continues, the foregoing provisions will become operative March 27, 1907.

tory, provision is finally made by the act for the representation at Washington of the Territory governed. In the case of the organized Territories such representation, as is well known, is secured through the delegates which the Territories send to the house of representatives. In the Philippine act Congress does not go to this extent. Instead, it merely provides that as soon as the islands shall become entitled to an insular legislature that body shall choose two resident commissioners to the United States who "shall be entitled to an official recognition as such by the departments upon presentation to the President of a certificate of election by the civil governor of the islands." To be eligible for election to this office the person must be a qualified elector of the islands, own allegiance to the United States and be at least thirty years of age. The term of office of the commissioners is two years and the compensation five thousand dollars per annum with a further allowance of two thousand dollars for expenses. Regarding these commissioners it is to be noted that through them the islands are not in any way given a participation in the Federal Government. Indeed, no special duties are assigned the commissioners. Their sole function is that of acting as a means through which matters of business may be taken up with the officials at Washington and the wishes of the insular government made known. The manner of their selection is also of special interest. Instead of being elected by popular vote, as are the territorial delegates and the commissioner for Porto Rico, they are to be elected by the two houses of the legislature voting separately.

Other provisions of the act that may be mentioned are those conferring upon the inhabitants of the Philippines most of the fundamental rights and privileges that are guaranteed to citizens of the United States by the Constitution; namely, that no law shall be enacted which will deprive any person of life, liberty or property, without due process of law; that no law impairing the obligation of contracts shall be enacted; that slavery or involuntary servitude shall not be allowed to exist; that no law shall be passed abridging the freedom of speech or of the press or the right of the people peaceably to assemble and petition the government for redress of grievances; and that no laws shall be made respecting an establishment of religion or prohibiting the free exercise of a religion; that the rule of taxation in the islands shall be uniform. In respect to the power to borrow money, the act provides that the insular government may issue bonds for the purchase of the lands of the religious orders, but does not confer any general power to contract bonded indebtedness. On the other hand, the insular government is given the authority to authorize any municipality to incur indebtedness to an amount not in excess of five per cent of the value of the property within its limits as assessed for purposes of taxation. The conditions upon which issue may be made, such as the rate of interest, the constitution of a sinking fund for the repayment of the principal, etc., are carefully provided.

The financial system of the islands had already been in part determined by a prior act passed by Congress March 8, 1902. This act ratified the action of the

Philippine commission in framing and putting into force a special insular customs system and provided that importations into the United States from the Philippines should pay only seventy-five per cent of the duties imposed by the Federal customs law. This, taken in connection with the fact that Congress did not extend to the Philippines the Federal excise system, thus gave to the islands practically full authority to create such a revenue system of their own as they might desire. In respect to a currency system, Congress, after a very full consideration of the subject, arrived at the decision that it would be unwise to extend the system of the United States without change to the Philippines. Accordingly, by an act passed March 2, 1903, it made provision for a special system of currency for the islands which should be based upon a peso having the value of one-half of a gold dollar of the United States. The organic act of July 1, 1902, had already made provision for the coinage of subsidiary coins by the Philippine government at its own mint. Under these provisions, while the Philippines will have their own coinage system, that system will have a fixed relation to the system of the United States. This settlement of what has been one of the most difficult problems with which the Philippine government has had to deal forms an interesting chapter in the study of American finance, but is one into which it will not here be appropriate to enter.

This legislation by Congress, as has been said, far from creates a complete system of government for the Philippines. Thus it contains practically no provisions regarding either the organization or general

powers of the executive or judicial branches of government, and its provisions regarding a legislature are only to go into effect at a future date. All of the actual work of organizing the executive and judicial services is given to the Philippine commission. The action already taken by that body in this direction is approved, while authority is given to make such additional provision as it sees fit, provided the specific provisions of the organic act are not contravened. This act of July 1, 1902, must therefore be read in connection with the action of the commission. It is only by a study of the latter that it will be possible to gain anything of an idea of the real system of government under which the affairs of the Philippines are now being administered.

The commission when appointed was given full scope to take such action as it deemed best for the government of the islands over which it had been given authority. The task before the commission was one commensurate with this large grant of powers. It is true that there were administrative departments and judicial tribunals in full operation under the Spanish régime, but in few respects were these departments or tribunals of a character, or did they perform their work in such a way, as at all to correspond to the legitimate ambitions of the United States in respect to the performance of matters over which they had jurisdiction. The commission was thus under the necessity of creating an almost entirely new body of laws and an administrative system that should cover all the duties and obligations properly belonging to a government. One has but to look through

the dozen or more volumes of laws enacted by the commission to appreciate the extent of the work accomplished by it during the few years that it has been in existence. It has had to organize itself as a legislative body and prescribe the manner of its proceedings when acting as such; it has had to create bureaus and segregate them into departments for the proper performance of its administrative duties; to establish a judicial system, including courts of all classes, and to fix the respective jurisdictions of each class of courts; to pass fundamental laws, such as those relating to civil procedure, corporations, banking, insurance, etc., and, finally, to elaborate a financial system and make detailed provisions regarding the manner of its administration.

While it is impossible within the limits of the present work to give anything like a full account of the work that has been done by the commission in this way, or a detailed description of the machinery of administration that has been created, the attempt at least may be made to give a general idea of the nature and extent of the work and of the essential principles upon which the actual organization of government in the islands now rests.

Methods of Legislation by Commission. First, in regard to the work of the commission as a legislative body. In performing this important function the commission had full power to act in such manner and to adopt such rules of procedure as it saw fit. In spite of the small number of its members, the commission from the start decided that when acting in a legisla-

tive capacity it would not only sit in a formal manner as a legislative body, but that its sessions should be open to the public, except in the few cases where the public interests might require executive sessions. The commission, indeed, went beyond this in the matter of publicity, and not only invited all persons to attend the sessions and hear the discussions or arguments, but took the very unusual step of granting permission to any person who desired to be heard in reference to a matter to speak regarding it. That this permission might be a real privilege, it provided that all proposed measures should first be printed and furnished to applicants before formal debate and action on them by the commission. Thus the commission upon entering upon its legislative duties, September 1, 1900, formally announced that:

> The policy of the commission will be to give the fullest opportunity for public consideration and criticism of proposed measures of legislation affecting the people of these islands. Printed copies of introduced bills will be on file at the office of the secretary of the commission immediately after their introduction, and may be had upon application. The commission will hold public meetings at its offices at 10 o'clock A. M., on Wednesdays and Fridays of each week for the consideration of proposed bills, and at such meetings citizens of the Philippines and others interested will be given opportunity to make suggestions and criticisms in respect to the proposed measures, if upon the day previous to the meeting application be made to the President for assignment of time.

On September 26, 1900, moreover, it passed an act relating to the order of procedure by the commission in the enactment of laws which prescribed that every

bill proposing an act should first be read in executive session; that after such reading it should be considered and perfected in the committee of the whole until all proposed amendments had been adopted or rejected; that as thus perfected it should be reported on a subsequent day to the commission in executive session and read a second time, when it might be further amended; and that as thus amended it should then be translated and printed and copies in English or Spanish be immediately furnished for publication in each daily newspaper published in Manila, an announcement at the same time being made of the date when it would probably be considered in open session. At such open session the bill is to be taken up and read a third time, and any person present desiring to be heard upon it who has made application for permission to do so can speak and make any criticism of the proposed measure that he desires, and the members of the commission themselves may discuss the measure further or propose amendments. The bill is then to be put upon its final passage. This procedure, while generally followed, is not obligatory upon the commission, the right being retained, where the public interests seem to make such action desirable, to omit public hearings.[1]

This policy of giving the fullest possible publicity to the acts of the commission is undoubtedly a wise

[1] In actual practice the commission has found it advisable to a very considerable extent to declare that public interests make desirable the omission of public hearings. This is particularly true of measures of a technical character.

one. The secret enactment of laws by an appointed commission, without any public discussion or opportunity on the part of the people to express their own wishes relative to the matters involved, would have given to the whole scheme of government an appearance of the exercise of autocratic powers that the American authorities are extremely anxious to avoid. The provision that the measure shall first be discussed and brought into definite form in executive session and then printed for distribution is especially wise, as it avoids the necessity of considering in public those measures which the commission may upon consideration decide to postpone indefinitely, and also gives to the measure that definiteness which it is necessary that it should have, in order that it should serve as a basis for intelligent discussion. This method of procedure, moreover, is exceedingly important from an educational standpoint. In no other way would it be possible, to a like extent, to give to the Filipinos practical instruction in legislative methods or to make known to them the motives which should dictate legislative action.

This policy of publicity has been still further carried out by the commission when passing special laws creating provincial governments for the different provinces of the islands. When that task was entered upon the commission made an extended tour throughout the islands, going from province to province and holding at the capital of each a public session at which the bill providing for the organization of a government in that province was brought forward and discussed by the commission and an expression of

opinion on the part of the people themselves invited. As thus elaborated the bill for the government of the province was formally enacted into law.

Administrative Organization. Turning now to the creation of administrative services, the commission found already in operation a considerable number of bureaus that had been continued in existence or that had been created by the military authorities. All of these bureaus, however, had to be more or less reorganized and a large number of additional services created. In all something over forty bureaus were created or reorganized by the commission. The following enumeration of the titles of some of these bureaus will give an idea of the character of the administrative services that have been created and of the administrative work now being performed by the Philippine government. By successive acts of the commission there were created or reorganized: (1) a bureau of agriculture; (2) a bureau of public lands; (3) a bureau of government laboratories, biological and chemical for the production of vaccine virus, serum and prophylactics; (4) a bureau of statistics; (5) a bureau of the insular purchasing agent, the duty of which is to purchase and keep in general warehouses a stock of all supplies and materials needed by the various departments of the government for their current work, and to re-sell them to such departments at a price representing the original cost plus ten per cent to cover expense of transportation, etc.; (6) a weather bureau, with numerous sub-stations throughout the islands; (7) a bureau of forestry; (8) a bureau of mines; (9) a bu-

reau of cold-storage and ice-plant; (10) a bureau of archives; (11) a bureau of agriculture and construction of public buildings; (12) a bureau of public printing; (13) a bureau of coast-guard and transportation, through which official communication with the different parts of the archipelago may be maintained; (14) a bureau of engineering; (15) a bureau of non-Christian tribes, subsequently renamed the ethnological survey for the Philippine Islands; (16) a bureau of posts; (17) a bureau of prisons; (18) a signal service; (19) a quarantine service; (20) a bureau of coast and geodetic survey; (21) a department of public instruction, to have entire charge of the advancement of education in the islands; (22) a series of bureaus, consisting of a bureau of the insular treasurer, a bureau of the auditor, a bureau of customs and immigration, and a bureau of internal revenue, to have charge of the collection, disbursement and general management of the financial affairs of the islands; (23) a civil service board; (24) a bureau of Philippine constabulary; and (25) an executive bureau to have charge of all matters requiring the direct executive action of the civil governor.

By an act passed September 6, 1901, all of these and the other bureaus then in existence, with the exception of a few, which were left under the charge of the civil governor, were segregated into four departments, to be known, respectively, as (1) the Department of the Interior; (2) Department of Commerce and Police; (3) Department of Finance and Justice, and (4) Department of Public Instruction. One of the American members of the Philippine commission

was assigned as the secretary of each department. This act was passed for the purpose of carrying out the special order of the President that has already been mentioned by which the commission was directed to organize four executive departments under the rules given and to assign one of its American members to have charge of each. This act, it will also be remembered, was specifically approved by the organic act of July 1, 1902.

Of the character and work of most of the bureaus it is unnecessary to comment further. A brief account, however, should be given of the administrative services by which matters relating to the public health and education are cared for, of the bureau of the insular constabulary, and of the civil service board.

A board of health for the Philippine Islands was established July 1, 1901. This act created a board or commission composed of a commissioner, with a salary of $6,000, a sanitary engineer, a chief health inspector, the superintendent of government laboratories, and a secretary. To this board was entrusted the general supervision over all of the interests of the public health in the islands, with the duty of making all necessary investigations and taking all necessary steps for the protection of the public health, the prevention of epidemics, the securing and compiling of vital statistics, the securing of prosecutions of all violations of the sanitary laws, the organization of an inspection service, the passing upon plans for public buildings, water works, sewer systems, crematories for the city of Manila, and, upon the request of any municipal council, similar plans for

such municipality. The health service for the islands thus created was further completed by the passage of two acts December 2, 1901, providing for the creation of provincial and municipal boards of health, respectively, in all the provinces and municipalities of the islands. These provincial and local boards of health have as their duty to look after the public health in their respective districts. While they have the power of taking immediate action in respect to their districts, the municipal boards are in all essential respects subject to the general supervision and control of the provincial boards and the latter are in like manner subject to the supervision and control of the insular board. An intimate relation is thus established between the work of the three boards in such a way that the insular board can exercise supreme authority over matters relating to public health in the islands. This provision for control on the part of the insular board is a matter of the utmost importance, for, without it, it would be very difficult, if not impossible, to secure proper action by the local authorities.

In respect to education, there is not only the department of public instruction, having general charge over the educational interests of the islands, but a superior advisory board of education composed of the general superintendent of education, who is the chief officer of the department of education under the secretary of the department, and four members appointed by the Philippine commission. Provision is also made for local school boards in each municipality, of which the president or alcalde of the municipality is chairman. One-half of the members of these mu-

nicipal boards are elected by the municipal council and the other one-half are appointed by the division superintendent of education. The functions of these boards are to visit the schools, to recommend sites and plans for school buildings, to adopt rules, subject to the supervision of the division superintendent, and to report to the municipal council the amount of money that should be raised by local taxation for school purposes, and to the general superintendent regarding the condition of the schools, with such suggestions in respect to them as they deem expedient.

The matter of providing means by which order should be maintained and crime prevented, without having to resort to the assistance of the military forces, was evidently one of the most important problems to be met by the Philippine government. The first step in the organization of a native police force was taken by the military authorities by the issue, on June 18, 1900, of General Order No. 87 of that year. This was followed by an act of the Philippine commission, December 12, 1900, providing for the organization and maintenance of an insular police force and appropriating money for its support. Later, on February 18, 1901, the commission, by act No. 175, made definite provision for the establishment and government of an insular constabulary to consist of not less than fifteen privates, one sergeant, and one corporal, and not more than one hundred and fifty privates, four sergeants and eight corporals for each province. This force is organized under a chief of the insular constabulary largely as a military body and is trained so as to act both as policemen in the prevention of

crime by individuals and as a body for the quelling of insurrection or the suppression of general disorder. The act provides that the force in the different provinces may be brought together where necessary to assemble a considerable number in one body. The name of this force was later changed to "Philippine Constabulary." Provision was also made for assistant chiefs of the constabulary and for inspectors to supervise the manner in which the police services of the several municipalities are administered. This body of men thus provided has proven an extremely efficient force, and it is in consequence of its efficiency that the transfer of authority from the military to the civil authorities was possible of such speedy accomplishment. The local police force in the different municipalities, however, in many instances proved very inefficient. By act of June 1, 1903, the civil governor, or the provincial governor upon the approval of the civil governor, is authorized, whenever he deems it for the best interests of the public, to place the municipal police force under the direct control of the senior inspector of the Philippine constabulary.

The most interesting and probably the most important action taken by the Philippine commission relative to the actual performance of administrative duties was the passage by it, September 19, 1900, that is, only a few days after the organization of the commission as a legislative body, of an act putting into operation what is probably the most complete and rigid civil service system ever adopted. This act, while based upon the Federal act, goes much further than that law in a number of important respects. In

its present amended form the act provides for the creation of a civil service board having the same general powers as the United States civil service commission, for the classification of practically all of the employees of the Philippine government, insular, provincial and municipal, and for the requirement that entrance to classified service shall be exclusively in accordance with examinations to be held under the auspices of the board. In these respects the act is similar to, though more comprehensive as regards the proportion of government employees coming within its provisions, than the Federal law. The act, however, goes further and provides, as the Federal system does not do, that promotions in the service shall be made as the result of further examination, in which due weight shall be given to the records of efficiency of the candidates. A civil service system has been generally held to apply better to the lower than to the upper grades of employment, with the result that in most laws the more responsible positions have not been brought under its provisions. The Philippine act meets this problem of the filling of the higher positions in an ingenious way. It provides that all of a certain number of enumerated positions, including in such enumeration practically all chiefs of bureaus and such other responsible positions as chief of the Philippine constabulary, the director of posts, the executive secretary, the insular purchasing agent, the collectors of customs at the different ports, the collector of internal revenue, and the members of the civil service board itself, shall be filled by promotion from a class composed of the first, second and third assistants in all

of the bureaus or offices of the Philippine government, provided that competent persons can thus be secured. The intention of the provision is stated to be "that the appointing power may by virtue hereof transfer from one office to another a person deemed competent to fill the vacancy." This provision is both the most novel and one of the most important of the act. Commenting upon it the board, in its annual report, says: "The provision for filling the higher bureau positions by promotion is an important and distinguishing feature of the Philippine civil service act. The Federal civil service law has no provision comparable with this, which invites and induces young men with excellent ability and training to enter the lower grades. It is an excellent exemplification of the merit system. It means a civil personnel above mediocrity and the establishing and maintaining of an efficient civil service in the Philippines." Of the influence of the act in securing and maintaining an efficient personnel there is but one opinion on the part of those in a position to judge. Thus the Philippine commission, in its last annual report, says: "The civil service law has been in operation since our last report, and we see no reason to change our conclusions as to the absolute necessity for its existence and strict enforcement. Without this law American government in these islands is, in our opinion, foredoomed to humiliating failure."

The act, as has been said, covers practically all positions except those filled by the civil governor, with the approval of the Philippine commission, and the few important positions appointments to which are

made by the Federal authorities. In regard to these latter it should, moreover, be noted that the President and secretary of war have rigidly followed civil service principles in making their appointments, in all cases sole regard being had by them to securing the best talent possible for the positions to be filled without regard to political, personal or other influence. This policy is stated very strongly by Secretary Root, in his annual report as secretary of war for the fiscal year ending June 30, 1901. "In providing the personnel of the government, which is thus gradually superseding military administration," he writes, "the department has proceeded upon the assumption that the honor and credit of the United States is so critically involved in creating a good government, that the importance of securing the best men available should outweigh and practically exclude all other considerations. This principle has been followed without deviation. No officer, high or low, has been appointed upon any one's request, or upon any personal, social or political consideration." He then goes on to state that neither the secretary of war nor the President has interfered in any way to dictate to the Philippine commission persons to be employed by it. These appointments made by the administration at Washington after the commission had entered upon the performance of its duties were those of the governor, vice-governor and members of the commission, who were appointed upon the recommendation of the secretary of war; the auditor, deputy auditor and treasurer, appointed by the secretary of war; and the director-general of posts, appointed by the post-

master general. By an order dated November 30, 1900, President McKinley directed the United States civil service commission to co-operate with the civil service board of the Philippine Islands so that the former might take charge of examinations in the States for positions in the islands and to provide for a system of transfer from the insular to the Federal service, or vice versa. The rule of the Philippine board, however, is, wherever possible, to give the preference to native Filipinos, and after them to honorably discharged soldiers, sailors and marines of the United States.

Judicial System. The organization of courts of justice and the determination of the methods through which crime and disorder should be prevented and disputes adjusted was the first matter relative to civil administration that demanded the attention of the military authorities upon the occupation of Manila. Provost marshal courts were immediately created and the organization of purely civil courts not long delayed. A Supreme Court of nine judges, six of whom were Philippine lawyers of distinction, and three officers of the American army who had had legal experience, was established at Manila on May 29, 1899. A subordinate court and a justice of the peace court was likewise created for each of the four judicial districts of the city. As additional territory was occupied by the army, additional courts of first instance and of justices of the peace were created.

There was no idea that these courts would constitute a permanent system for the administration of

justice. They were intended merely as a temporary expedient to meet an immediate exigency. The Philippine commission, upon assuming its legislative powers, September 1, 1900, therefore, immediately applied itself to the problem of formulating a comprehensive judicial system that would offer a permanent solution of the question. This work was undertaken by Commissioner Ide in connection with the elaboration of a new code of civil procedure. After the completion of the first draft, these two acts were revised by President Taft and Commissioner Wright, and the other two members of the commission who had had a legal education. As thus revised they were printed in both the Spanish and English languages and given wide distribution among members of the bar and others whose judgment relative to them would be of value. They were then discussed in open session for a period of nearly two months, during which time they received important amendments and improvements, and were finally enacted into law.

The first of these acts is entitled "An act providing for the organization of courts in the Philippine Islands," and was approved June 11, 1901. By it complete provision is made for a system of judicial tribunals from the highest to the lowest to cover all parts of the archipelago that were subject to civil authority and were not specially excepted. It makes provision for three classes of courts: a Supreme Court to be located at Manila, courts of first instance, and courts of justices of the peace. In addition it leaves to the mayors of municipalities the powers conferred upon them by the municipal code to try offenses

against municipal ordinances. Provost courts, with their special powers, are continued in existence where they are deemed necessary by the military governor.

The Supreme Court is made to consist of a chief justice and six associate judges. Their qualifications are that they shall be more than thirty years of age, citizens of the United States or natives of the Philippine Islands, or have by virtue of the Treaty of Paris the political rights of natives of the islands, and have practiced law or been a judge of a court of record in the United States or in the Philippine Islands or in Spain, or, previously to the date of the ratification of the Treaty of Paris, in any Spanish territory for a period of five years, or for a like period have filled any office which requires a legal degree as an indispensable qualification in the Philippine Islands, or, previously to the date of the ratification of the Treaty of Paris, in any Spanish territory. These judges, it was provided, should be appointed by the commission; later, however, it was provided by the organic act of 1902 that they should be appointed by the President by and with the advice and consent of the Senate. This court, as its name implies, is the highest judicial body of the archipelago. It has both original and appellate jurisdiction. Its original jurisdiction consists of the power to issue writs of mandamus, certiorari, prohibition, habeas corpus and quo warranto in the cases and manner prescribed in the code of civil procedure, and to hear and determine controversies in certain cases specially provided by law. As an appellate tribunal it has the power to hear on appeal all actions and special proceedings properly brought to it

from courts of first instance and from other tribunals where such appeal is authorized. The governors of the provinces and the sheriff of Manila are constituted officers of the court through whom process may be served. The decision of the court must be in writing, and the court is required to appoint a reporter with the duty of compiling and publishing such opinions as the court deems of sufficient importance to be preserved in this manner.

In respect to courts of first instance, the act prescribed that there should be one such court for each province. Two judges, however, were given to the Manila court with the provision that they might sit separately. Later, by amendments to the law, the Manila court was increased to three judges and authority given to the civil governor to appoint four additional judges who might be assigned to those provinces most in need of their services. All of these judges were to be appointed by the commission to serve during good behaviour. Afterwards, as will be remembered, the act of Congress provided that the appointment of these judges should be made by the civil governor by and with the advice and consent of the commission. These courts have both original and appellate jurisdiction. Their original jurisdiction embraces the right to try all civil actions in which the subject of legislation is not capable of pecuniary estimation; in which the legality of any tax is questioned, or in which the title and possession of real property or any interest therein is involved, except actions of forcible entry into and retainer of lands or buildings, original jurisdiction of which is conferred upon courts

of justices of the peace; all cases involving one hundred dollars or over; admiralty and maritime cases irrespective of the amount involved; and all matters of probate, appointment of guardians, trustees, receivers, etc. In criminal cases they have jurisdiction in all cases where the penalty that may be imposed exceeds six months' imprisonment or a fine of one hundred dollars. The appellate jurisdiction of the courts consists in the right to hear appeals in cases arising in justices and other inferior courts properly brought before it.

The provisions relative to justices of the peace courts are that one such court shall be constituted in each municipality organized under the municipal code in a province having a court of first instance. The justices, by virtue of an amendment made to the law, are appointed by the civil governor by and with the advice and consent of the commission, and hold office during the pleasure of the appointing power. The appointments, however, must be made from lists of suitable persons nominated for such appointments by the provincial boards of each province for the several municipalities within the province. The jurisdiction of these courts embraces the right to try all cases of misdemeanor and offenses where the sentence that may be imposed does not exceed six months imprisonment or fine of one hundred dollars; civil actions involving less than three hundred dollars, jurisdiction over which has not been given to the courts of first instance; and those relating to forcible entry into and detainer of real estate irrespective of the amount in controversy. Justices of the peace receive their com-

pensation through fees of three pesos for each action, civil or criminal, tried by them. In criminal actions the fee must be paid by the municipality, but is taxed as a part of the costs against the defendant, if he is convicted and sentenced to pay the costs. These fees, however, cannot be retained by the justices, but must be turned in in connection with other fees and costs to the municipal treasurer, and are afterwards repaid to them after due examination and audit of their accounts is had. In making such audit the auditors are specially directed to assure themselves whether needless prosecutions for the purpose of increasing fees have been instituted, and if such is the case to report the fact to the commission, requesting the removal of the offending justice. Any officer of the governor or the sheriff of the province is authorized to act as an officer of the justice of the peace court and to serve process. Process can likewise be served by any bailiff appointed by the justice for that purpose, or by any policeman of the municipality.

To recapitulate, it will be seen that the act with its amendments, the provisions of which have just been described, creates a logical and harmonious judicial system for the islands. The mayors of municipalities have jurisdiction over violation of municipal ordinances; justice of the peace courts in each municipality of an organized province have authority to try petty penal offenses and civil cases involving less than three hundred dollars, their jurisdiction being exclusive when the amount involved is less than one hundred dollars; a court of first instance in each province has original jurisdiction in respect to im-

portant civil and criminal actions, and appellate jurisdiction over cases appealed from the justice of the peace court; and finally a Supreme Court at Manila has original jurisdiction in respect to the issuance of certain important writs and appellate jurisdiction in respect to important cases decided in the courts of first instance. From this court appeal can still be taken to the Supreme Court of the United States in cases involving large sums, constitutional questions, etc.

This system of courts is rounded out by various other acts, the most important of which are those providing for the organization of the office of the attorney-general of the islands, through which the system is administered, and for codes of civil and criminal procedure based upon American principles. The code of civil procedure makes important changes in the system that was in force under Spanish rule. Among them may be especially mentioned the abolition of the practice of challenging judges, which in practice had resulted in an almost complete stoppage of the business of the courts. Commenting upon this feature the commission, in its annual report for the fiscal year ending June 30, 1901, said:

> Under the Spanish procedure a system of challenging judges, magistrates and justices of the peace existed which was found to result in an absolute paralysis of the whole machinery of justice in certain cases. Aside from the ordinary grounds of disqualification of judges which exist in the United States, the Spanish law allowed a peremptory challenge of the competence of judicial officers on the ground of undue friendship or hostility to either party or his counsel. Upon these or other grounds it was practicable for the party to challenge

the competency of a judge or magistrate at nearly every stage of the proceedings, when the party wished to secure delay or imagined that the judge or magistrate was liable to decide against him. Upon the filing of the challenge as to the competency of the judge or magistrate, the question of competency was referred to another judge or magistrate to determine, and the original proceedings awaited the termination of this side issue. But the competency of the judge or magistrate sitting to determine the competency of the first judge or magistrate could be challenged upon the same ground, and the fitness of the second judge or magistrate to sit in the trial of the question of the competency of the first one was referred to a third, and so on, ad infinitum. Criminal prosecutions were pending in the city of Manila in which every available judge and justice had been challenged, so that the alleged criminal was able to hold the public entirely at bay and prevent all proceedings to secure his conviction.

The discontinuance of this at once furnished relief and allowed the wheels of justice again to move.

Other important changes introduced by the civil code are those doing away with the civil liability of judges and justices of the peace for error in their judicial determinations; providing that sittings and proceedings of every court shall be had in public except where the testimony is of such a character as to make it undesirable in the interest of public morality that they should be public; simplifying pleadings; providing that appeals may only be taken from a court of first instance to the Supreme Court by bill of exceptions and then only on final judgment disposing of the action in the lower court, thus doing away with an infinite series of interlocutory appeals that had hitherto delayed justice; and that introducing the system of assessors. This last change is

of such interest that some further description of its character and purpose should be given.

The commission was firmly of the opinion that conditions were not ripe for the introduction of the right of trial by jury. In order, however, to attain in a measure the ends sought by that system of trial, it decided to adopt the system which, under the Treaty of Berlin, had been put into practice in Samoa and which had also been employed in various British and German colonies. According to this system, either party to an action in a court of first instance has the right to request that two assessors shall sit with the judge for the purpose of determining the facts in the case. These two assessors are selected from a list consisting of not less than ten or more than twenty-five names drawn up by the judge of the court with the assistance of the governor of the province and the clerk of the court from among residents of the province best fitted by their education, natural ability, or reputation for honesty, to serve in that capacity. The two assessors are selected from this list by each party to the action alternately striking out one name from the list until only two remain, which two then serve. The duties of the assessor are to sit with the judge upon the trial of the action and to advise him in the determination of questions of fact. The final responsibility for the decision, however, rests with the judge. If the two assessors are both of the opinion that the decision of the judge as regards the facts is wrong, they must reduce their dissent to writing, which writing will then be considered and given its proper weight by the Supreme Court upon the matter going

to it on appeal. The commission states that it considers this system useful not only as an aid to the judge, but as safeguarding to a greater extent the interest of the parties and serving as a means of education of the people.

In the practical administration of justice, under the system of courts that has been described, one of the most important questions that has had to be decided has been that of the extent to which Americans shall be put upon the bench. In the organization of the Supreme Court the positions of chief justice and of two of the associate judges were filled by Filipinos and the remaining four judgeships were given to Americans. The judgeships of the courts of first instance were given partly to Filipinos and partly to Americans, who in nearly all cases spoke or soon acquired the Spanish language. While an American was appointed attorney-general, Filipinos were given the positions of solicitor-general and assistant attorney-general. All of the positions of justices of the peace were given to Filipinos. The position of "fiscal" or prosecuting attorney is likewise in practically all cases filled by a Filipino.

CHAPTER VII

GOVERNMENT OF THE PHILIPPINES: PROVINCIAL GOVERNMENT

General Provincial Act of 1901. In no respect has Congress shown greater wisdom in dealing with the insular dependencies than in restricting its own action to that of making provision for a central or insular government in each case and in leaving to the government thus created the entire task of devising systems of subordinate governments for the administration of local affairs. In the Philippines this policy has been especially fortunate, as, owing to the great diversity of conditions prevailing in the archipelago, it is difficult to see how any authority not on the spot and thoroughly familiar with local conditions could have made an approach to correct action.

When President McKinley appointed the Philippine commission, the organization, as rapidly as circumstances would permit, of local government in the islands was especially mentioned in his instructions to that body as one of the most important and urgent tasks that it should undertake. To this problem, therefore, the commission immediately applied itself. It found that under Spanish rule the archipelago had been divided for governmental purposes into provinces and these in turn into municipal districts. This

twofold distribution of governmental powers among provincial and municipal governments it was deemed wise to maintain in order to obviate the great centralization of power that would result if provision was made only for municipal governments. The commission accordingly had to take steps for the organization of two classes of local governments: provincial and municipal. A consideration of the first of these classes will logically follow that of the central government which has just been described.

It was immediately seen by the commission that such was the diversity of conditions in the different provinces, that no one scheme of government could be made applicable to all. A number of distinct systems have had accordingly to be devised. If we except the action taken for the organization of a government for the province of Benguet, which was in the nature of a tentative act, the first steps taken by the commission was to draft what may be called a model provincial act for those provinces which had advanced the furthest in civilization, and to which in consequence the largest measure of self-government could safely be accorded. This act is called a model act both because it provides a form of government to which it is desired that the government of the provinces shall, as nearly as their condition of development will permit, conform, and because, when it was enacted, it was not made applicable to any particular province, an additional special act being required in each case to bring a province under its provisions. In these special acts particular provisions may be, and always are, inserted making such modifi-

cations in the general act as special conditions in the provinces legislated for seem to make desirable. These special provisions are not, however, either very important or numerous.

This model act, as has been said, was intended to apply to those provinces to which the largest measure of local autonomy could be given. To meet the requirements of those provinces coming next in respect to their development there was formed a modified model act. This act, unlike the model act, was made to apply immediately to one of the provinces, that of Nueva Vizcaya. It was subsequently extended to several other provinces and is known as the "Nueva Vizcaya Act." Even the form of government provided for by this act represented a larger grant of powers than it was thought could be wisely given to certain provinces. For the government of these, therefore, other provision had to be made. Different and distinct forms of government were thus created for the Moro province, and for the province of Benguet and the districts occupied by certain non-Christian and uncivilized tribes. Finally special action was taken in the case of the island of Negros, though the government thus established was afterwards abolished. The general provincial act was passed by the Philippine commission on February 6, 1901. It has been subsequently amended in various not very important particulars. The description that is here given is of the act as thus modified.

Under this act the government of each province to which it is made to apply is constituted a body corporate with powers to sue and be sued, to incur obli-

gations and generally to possess the powers given to public corporations. The form of the government here created is in a way an adaptation of that of the insular government itself as exercised through the commission. Provision is thus made for a provincial board, to consist of a provincial governor, a provincial treasurer and a provincial supervisor, in which, and in its members individually, are vested most of the important governmental powers. The only other important officers are the provincial fiscal and the provincial secretary, who also acts as the secretary but is not a member of the provincial board. To be eligible for any of these offices a person must be either a citizen of the United States, a native of the Philippine Islands, or a person who, not being a subject or citizen of any other power or government, has acquired the political rights of a native of the islands in accordance with the terms of the Treaty of Paris, and who has not violated the same, and who is not in arms or does not give aid and comfort to those in arms against the United States. It is expressly provided, however, that non-residence in the province shall not render the person ineligible to any of these positions.

Of these offices, that of provincial governor alone is made elective. All of the others, according to the law, were to be filled by appointment by the commission until March 1, 1902, after which they were to be selected, with the exception of the fiscal, in accordance with the provisions of the civil service act. All such appointees must be able to speak and write the Spanish language and after July 1, 1906, the English language as well. In making these appointments the pol-

icy of the commission has been to appoint Filipinos wherever practicable. The secretaries and fiscals have in all cases been Filipinos, while in general the offices of treasurer and supervisor have been filled by Americans. A majority of the members of each provincial board is thus composed of Americans. In a number of cases, owing to the difficulty in securing proper supervisors, that office has been consolidated with that of the provincial treasurer.

The manner of the election of the provincial governor is an interesting one. Every two years the members of the municipal councils of the organized municipalities in the province meet at the capital of the province, and in joint convention proceed to the election of a governor. A majority of all present and entitled to vote is required for election, and the balloting must be secret. The result of this election must then be certified to the civil governor, who must confirm the election unless he finds that it was unfairly conducted, or that the person chosen is ineligible, or that there is reasonable ground for suspecting his loyalty. If for any of these reasons the election is not confirmed, the convention must be reconvened and a new election proceeded with. If the action of this convention is not approved by the civil governor, the provincial governor is then appointed by that officer with the advice and consent of the commission. Until the first election is held the governor is appointed by the civil governor of the islands.

The character of the government thus provided for can best be described by an enumeration of the duties of its different officers and of the provincial board.

The duties of the governor are those of a chief executive. He must see that all laws relating to the province are carefully executed, and that all provincial officers properly perform their duties; he must attend the court of first instance and be the officer through whom its orders are executed; subject to other provisions of law, he has control of the local constabulary or police of the various municipalities of the province and may even withdraw the police from one of the municipalities in order to make use of it in another. One of his most essential functions is that of acting as general supervisor over the officers of the municipalities of his province. He is required at least once in every six months to visit every municipality in his province and to hear complaints against any official. Upon the filing of charges, or upon receiving authentic information of the maladministration of any municipal officer, he may immediately suspend him. In such case he must immediately report his action to the commission, giving a statement of the reasons for the suspension, together with the evidence upon which he has acted. The commission, after investigation, may then either remove the suspended officer or reinstate him. The governor also has general charge, through a jailer or guards to be appointed by him, of all persons awaiting trial or duly sentenced to the provincial jail. He, finally, has the important power of employing all deputies or assistants necessary for the performance of his duties and of fixing their salaries. This power, however, is subject to the double restriction that such action must first receive the approval of the provincial board, and

that at the close of each month he must report to the insular treasurer the number and salaries of all persons thus appointed, which officer then has the power to abolish any office or reduce the compensation provided for it. The governor also presides at the meetings of the provincial board.

The provincial treasurer is a very important officer. He not only is the chief financial officer of the province, but has important duties in connection with the financial affairs of both the insular and municipal governments. He thus supervises the assessment of real property in all the municipalities in the province in the manner prescribed in the municipal code, collects all municipal and provincial taxes, with the exception of certain miscellaneous receipts, such as fines, rents from public property, etc., which are paid directly to the municipal treasurer, and acts as the collector of internal revenue for the province, being for that purpose a subordinate of the insular collector of internal revenue. Finally he has the very important duty of exercising a general control and supervision over the manner in which the municipal treasurers perform their duties. In exercising this function he has the power of preparing and putting into force rules for the guidance of the municipal treasurers, in which he can describe in detail the manner in which those officers shall keep their books of account, render monthly, annual and other reports, etc. The provincial treasurers in turn, however, are subject to the direct control of the insular treasurer and auditor, who may prescribe the manner and form in which they shall conduct the affairs of their offices.

It is also the duty of these insular officials to examine and audit the accounts of the provincial treasurers. The provincial treasurers have the power to appoint such assistants as they need, provided such appointments are duly authorized by resolution of the provincial board and are approved by the insular treasurer. The latter official has the power to abolish such offices, or to reduce the compensation provided for them as in his judgment seems desirable. All appointments must also be made in accordance with the provisions of the civil service act.

The duties of the provincial supervisor are those of a director of public works. He has charge of all such public works as the construction and maintenance of roads, bridges and ferries, which are not within the inhabited portions of the municipalities. All public buildings of the provincial government are in his custody. His power to appoint assistants is similar to that of the provincial treasurer and is subject to the same control on the part of the insular treasurer.

The provincial fiscals are not only the law officers and legal advisers of the provincial governments, but of the municipalities in their respective provinces as well. They must be regularly admitted members of the bar of the Supreme Court of the islands. Until March 1, 1902, they were appointed by the commission. Since that date they have, in accordance with the provision of the act, been selected pursuant to the provisions of the civil service act. The attorney-general of the islands is given the power of exercising a general superintendence over all the provincial fiscals,

and is directed to prepare rules for their guidance and to require of them such reports as he deems proper.

The provincial secretary is the custodian of the records of the province and is the officer through whom official correspondence is conducted. He also stands in the capacity of a vice-governor in virtue of the provision that, in case of a vacancy in the office of governor, or his absence from the province, he shall perform the duties of the governor during such absence, or until a new selection of governor is made.

The central feature of the system of provincial government thus provided is the provincial board. To this body is given the exercise of the legislative power in so far as that power is granted to the provinces. It must hold weekly meetings upon a day fixed by the board, and special meetings may be called by the governor. At these meetings, which must be public, it is the duty of the board to fix the rate of the ad valorem tax upon real estate for provincial purposes; to pass upon appointments and the compensation of employees submitted to it by the provincial officers; to order the construction, maintenance or repair of roads, bridges, etc., and the prosecution of public works generally; to direct the bringing, or defense of, suits on behalf of the provincial government; to order the monthly payment of all salaries provided by law and the payment of all lawfully contracted indebtedness by directing the issuance of warrants upon the provincial treasurer. Every such warrant must be drawn by the governor, be countersigned by the sec-

retary, and set forth the causes and purposes for which it is drawn, besides other necessary information.

In the majority, or all, of the special acts extending the provisions of this general act to particular provinces, the interesting provision is made that the "presidentes" or alcaldes of the municipalities of the province shall at certain dates assemble in convention for the purpose of considering and making recommendations to the provincial boards regarding improvements that should be made in the province. These conventions are called together by the provincial secretaries, who act as their secretaries, but elect their own chairmen. The number of such conventions is limited by an act passed July 2, 1902, to four in each year. A later act, passed November 17 of the same year, however, provides that the provincial board of any province organized under the general provincial act may, whenever it deems it desirable call a special meeting of any or all of the municipal presidentes of the province for the purpose of considering matters of urgency.

Provincial governments, it will be seen from the foregoing, do not exercise a very wide range of governmental powers. They, in fact, have but few really important duties. These may be recapitulated to be: (1) the execution of public works; (2) the collection of revenues, both provincial and municipal; (3) general control over the municipal police or constabulary that is vested in the hands of the provincial governors; and (4) the exercise of a general supervision over municipal officers. The provincial gov-

ernments have in fact little or no power of legislation, properly speaking, and consequently have not been given a real legislative body. The provincial board is in reality little more than a board of trustees composed of the chief officers of the province. The provincial officers in turn, with the exception of the governor, are not only appointed by the commission, but are subject to rigid control by that body and by the insular officials. The whole scheme of provincial government is thus but a means of decentralizing to a certain extent that control over local governments which it was thought best should be reserved to the central authorities. Even in respect to the matter of raising revenues and the expenditure of provincial funds the power of provincial governors is strictly limited. Thus the tax levy upon real estate cannot exceed three-eighths of one per cent and of this at least one-eighth of one per cent, the levy of which is obligatory, must be devoted exclusively to the construction and repair of roads and bridges.

The secretary to the military governor, in his annual report for the fiscal year ending June 30, 1901, makes the following comparison of the new provincial government with that existing under Spanish rule. He says: "The provincial governor is elected by the people, instead of being appointed. The qualifications of the provincial governor are so reduced that almost any native of the islands, regardless of residence, is eligible for election to this office; the provincial board is charged with real governmental functions, and not merely with the duty of inspection

and supervision of municipalities; the influence of the church in provincial matters is completely eliminated; a land tax is authorized.'' From the standpoint of conferring self-government upon the people, the most important change is that by which the people of a province are given the privilege of electing their governor through their representatives, the councillors of the various municipalities.

Nueva Vizcaya Provincial Act. The general provincial law has been extended to the great majority of the provinces of the archipelago. There are a few provinces, however, which, as has been said, are so largely inhabited by tribes of a low degree of civilization, that it has been held unwise to give to them that degree of self-government which is granted by the general act that has been described. For these provinces, therefore, special provision has had to be made. The first province of this class to be legislated for was that of Benguet. An act to organize a civil government in the province was enacted by the commission November 23, 1900, or several months before the general provincial act was passed. Subsequent to the passage of the latter act a law was framed for the organization of a provincial government for the province of Nueva Vizcaya. This latter act follows in a general way the Benguet act, but provides for a much more complete system of government. It, instead of the Benguet act, has accordingly been used as a model in the subsequent organization of provincial governments in those provinces to which it has not been thought wise to extend the provisions of the

general provincial act, and it is with its provisions therefore that we are here chiefly interested.

The Nueva Vizcaya act is directly modeled after the general provincial act, making use of the same language wherever practicable, and only departs from it where it is desired to restrict to a greater extent the grant of powers, or to reserve to the insular authorities a larger control. Thus, as in the general act, the provision is made that all governmental powers granted by the act shall be exercised by certain officers and by provincial boards composed of certain of them. These officers consist of a provincial governor, secretary-treasurer, supervisor and fiscal. It will be noted that the office of secretary and treasurer are held by one person instead of two, as under the general act. The three officers first named constitute the provincial board. The fundamental difference in the scheme of government thus provided for from that created by the general act lies in the manner of the selection of the provincial governor and the character of his powers, and in the extent of the authority of the provincial board. Instead of being elected by the members of the municipal councils of the province assembled in joint convention, the governor is directly appointed by the civil governor with the advice and consent of the commission in the same way as the other officials that have been named. Like them also, he holds office during the pleasure of the civil governor. As regards his duties, the governor not only possesses all the powers of civil governor under the general act, but in addition exercises a far greater authority over the administration of municipal affairs

than is provided for by that act. He thus has not only the duty of visiting at least once every six months each of the municipalities of the province and of suspending, pending final action by the commission, any municipal officer whom he believes to be guilty of maladministration of his office, but that of passing upon all ordinances enacted by a municipality. In performing the latter function he not only has the authority to veto any ordinance which he disapproves, but to suggest amendments or modifications in it, and if the council passing the ordinance does not return it in the shape that he desires, he may modify it so as to make it meet his wishes. He furthermore has the power on his own initiative to promulgate municipal ordinances where a municipality fails to act in regard to any of its essential duties. This prerogative of the provincial governor in respect to municipal affairs is so important that the wording of the act regarding it should be given in full. It reads: "He [the provincial governor] shall pass upon every ordinance or act of the several township councils of the province, approving it should he deem it satisfactory; should he deem it unsatisfactory, he shall return it to the council, suggesting suitable amendments; the council shall inform him of its action and he shall then approve the ordinance or act as demanded, or modify it, as he may deem necessary. Should the council of any township fail to fix the limits of the barrio of the township; to fix the salaries of duly authorized officers and employees; to make appropriations for lawful and necessary township expenditures; to regulate the sanitation of the township, and order the removal

of nuisances and causes of disease; to regulate the running at large of domestic animals; to adopt suitable measures to prevent the spread of disease; to prohibit gambling, cock fighting, opium smoking or the sale of opium for smoking; to provide and enforce regulations for the taxation of the retail sale, in quantities of less than five gallons, of any intoxicating, fermented, malt vinous liquors, except the native beverage made from rice, and known as 'tapuy'; to impose such other license fees as may be required by general law; to provide for the care of the poor, the sick or of orphans; to provide for the establishment and maintenance of schools for primary instruction; to provide for the construction and maintenance of necessary water works for supplying the inhabitants of the township with water, and for ensuring the equitable distribution and use of water for the purpose of irrigation in the township; or in general, to provide for carrying into effect and discharging the powers and duties conferred on them by an act providing for the establishment of local civil governments in the townships and settlements of the province of Nueva Vizcaya; or should it fail to enact such measures as are necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, good order, peace, comfort and convenience of the township and the inhabitants thereof and for the protection of the property therein: Then the governor shall issue to the presidente of such township suitable written orders for securing these rules, and these orders shall have the effect of law. But the constant aim of the governor shall be to aid the people

of the several townships of the province to acquire the knowledge and experience necessary for successful local popular government, and his supervision and control shall be confined within the narrowest limits consistent with the requirement that the powers of the government in the township shall be honestly and effectively exercised and that law, order and independent freedom shall be maintained."

As regards the powers and duties of the provincial board, the only important departure from the general act is that no power is conferred upon the board to levy any tax upon the real estate of the province for provincial purposes. In point of fact the board may be said to possess no general legislative power, its duties being limited to the ordering of public works, the authorization of the payment by the secretary-treasurer of salaries and other claims legally due, and the settlement of matters of a like nature.

To characterize the scheme of government as a whole, it will be seen that not a vestige of self-government has been conferred by the act upon the provinces to which it is made to apply. Such indeed is not the purpose of the act. The end sought is merely to provide a means for the decentralization in a measure of the exercise of the powers of government vested in the insular government, and to provide a more effective system for the supervision of the acts of the purely local or municipal authorities. The provincial officials are but agents of the insular government, and are at all times absolutely subject to its control. They are appointed by the civil governor and hold office during his pleasure. They may at any time be suspended from office

by that officer when he has any reason to believe them guilty of disloyalty, dishonesty, oppression or misconduct, which suspension may be made permanent by the commission after due investigation by it in which the accused has been given an opportunity to be heard.

The Benguet act differs from the Nueva Vizcaya act in providing a less complete system of governmental organization. There is thus no provincial board; and the general provincial officers appointed by the civil governor consists only of a governor, a secretary and an inspector. The duties of the treasurer are performed by the governor. No provision is made for the prosecution of any public work nor for any provincial receipts or expenditures, the latter being a charge upon the insular budget. The function of the provincial authorities of Benguet, in fact, are restricted almost entirely to that of supervision and control of the local authorities in much the same way as provided for by the Nueva Vizcaya act. The inspection of the conduct of affairs by the townships is made the exclusive duty of the provincial inspector. He is thus in effect the agent of the provincial governor, through whom the latter can more effectively perform his duties. In the Nueva Vizcaya act no provision is made for such an officer, as it is made the duty of the governor himself to visit the municipalities, investigate conditions and pass upon complaints.

Moro Provincial Act. The conditions existing in the territory occupied by the Moros were so different from those elsewhere that neither the general nor the

Nueva Vizcaya act was of a character suited to meet the requirements of the situation. Special provisions had accordingly to be made for its government. The Moro country consists of the Sulu Archipelago, Palawan, Mindanao and certain other adjoining territory or islands. The important characteristic of the inhabitants of these districts consists in the fact that, unlike the other inhabitants of the archipelago, they have a distinct tribal government and acknowledge obedience to chieftains, or dattos. The conditions here to be met are consequently not dissimilar from those presented in the government of the Indian tribes in the United States. The President in his instructions to the commission of April 7, 1900, expressly directed that when uncivilized tribes having a tribal form of organization were met with, such organization should be preserved and the effort made to govern through it. His precise language on this point was:

> In dealing with the uncivilized tribes of the islands the commission should adopt the same course followed by Congress in permitting the tribes of our North American Indians to maintain their tribal organization and government and under which many of our tribes are now living in peace and contentment surrounded by a civilization to which they are unable or unwilling to conform. Such tribal governments should, however, be subject to wise and firm regulations, and without undue or petty interference constant and active effort should be exercised to prevent barbarous practices and introduce civilized customs.

The effort was made at the outset both by the military authorities and by the commission to carry out these instructions. When the Moros, as in the neigh-

borhood of Lake Lanao, in central Mindanao, were in open arms against the American forces, little or nothing of course could be done in the way of the organization of civil government. In the Sulu Islands, however, the Americans were not opposed, and there the United States made its first attempt to govern through native rulers. On August 10, 1899, General Bates, who had been sent to occupy the islands, made a treaty with the Sultan of Jolo by which it was agreed that the Sultan should recognize the sovereignty of the United States, but that the actual affairs of government should be left entirely in his hands. This treaty, though not formally confirmed by Congress, was nevertheless acted upon for some time. It served a very useful purpose in preventing hostilities at a time when there was a great demand for American troops in other parts of the archipelago. It did not, however, afford a very satisfactory basis for a permanent arrangement. The recognition or quasi-recognition of slavery was in itself a feature of the arrangement that could not be allowed to exist for any great length of time. Furthermore, it was demonstrated that the Sultan could not be depended upon to maintain that minimum of efficient or honest government that was necessary. As Secretary Root, in his report for 1903, said: "Full experience with these people, however, has shown that the sovereignty of the Sultan is little more than nominal, and that he has not the power, even if he has the will, to maintain order. The people are really governed by a number of chiefs, or dattos, who pay very little attention to the theoretical authority of the Sultan." In view of this fact, both the

military and civil authorities in the Philippines became convinced that the arrangement that existed under the Bates treaty should be terminated as soon as possible. Full justification for the ending of the treaty existed in the fact that the Sultan had wantonly and repeatedly violated many of its terms. General Sumner, commanding the department in which the Sulu Islands is embraced, in his report of June 30, 1903, thus reported:

> Without going into a discussion of the Bates agreement, I do not believe any development can take place or any advance be made so long as the treaty stands. It was made, as I am informed, to meet and cover an emergency; its use as a temporary measure is passed, and we should now replace it by some wise and just measure that will allow us to get into personal contact and have more direct control and supervision of these people.

General Davis likewise, in his report of June 26, 1903, declared that the Bates agreement with the Sultan of Sulu, which, it appears, was advised by the Schurman commission, was an obstacle to the establishment of good government.

The Philippine commission fully concurred in the opinions thus expressed by the military commanders having immediate control over the Moros. On June 1, 1903, it accordingly passed an act making provision for a scheme of government, both provincial and local, for the territory not only of the Sulu Islands, but of all that occupied by the Moro tribes. The principal provisions of this act, which is entitled "An act providing for the organization and government of the Moro province," are as follows: The act first care-

fully defines the islands, or parts of islands, inhabited by Moros and which are subject to its provisions, and divides the territory into five districts. Provision is then made for both a general government for the whole Moro province and special governments for the five districts. The general government is vested in a governor, attorney, secretary, treasurer, superintendent of schools and engineer, appointed by the civil governor by and with the consent of the Philippine commission. The governor and engineer may be officers of the army detailed on the request of the Philippine commission by the commanding-general of the division of the Philippines. Thus the same person may be both the military and civil governor of the province; and this policy, in fact, has thus far been pursued through the appointment as such civil governor of General Leonard Wood, the general commanding in the district.

The governor in his civil capacity has all the powers conferred upon provincial governors under the general provincial act, and has under his immediate direction the municipal police in the various organized municipalities, and can also use and control the movements of the insular constabulary in the province.

In addition to acting in an administrative capacity, the governor, attorney, secretary, treasurer, superintendent of schools and engineer also constitute a legislative council with large powers of action. The council is thus given the authority to enact such measures as may be necessary for the proper government of the province, to provide for the execution of public works, to create a revenue system for the province, the re-

ceipts from which shall be supplemented by the customs receipts collected at the ports of Jolo, Zamboanga and Bongao, and all internal revenue taxes collected in such towns of the province as may be organized under the municipal code. It is especially directed to enact laws creating local governments among the Moros and the non-Christian tribes of a character "conforming as nearly as possible to the customs of such peoples and vesting in their tribal or local rulers as nearly as possible the same authority over their people as they now exercise consistent with the act of Congress entitled 'An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands and for other purposes,' and following as nearly as possible in the provisions of these laws any agreements heretofore made by the United States authorities with such local or tribal rulers concerning the powers and privileges which under American sovereignty they are by such agreements to enjoy, provided that they have not by their conduct and by the breach of the agreements forfeited such powers and privileges."

The council is also directed to collect and codify the customary laws of the Moros, modifying them where deemed advisable and amending them where they seem to be inconsistent with the provisions of the act of congress providing for the government of the Philippine Islands, and to organize special district courts for the consideration and decision of civil and criminal actions arising between members of non-Christian tribes and members of such tribes and the Moros. Finally it is expressly authorized to enact

laws "modifying or amending the municipal code in its application to the municipalities within the province so far as conditions in the Moro provinces differing from the conditions in the Christian Filipino provinces may require a modification."

Each of the five districts into which the Moro province is divided is given its own government subordinate to the general government of the province. The conduct of each of these governments is entrusted to a district governor, secretary and treasurer, who are appointed by the provincial governor with the advice and consent of the legislative council. The office of district governor may be filled by the detail of an army officer. The powers and duties of these officers need not be described. They act as local representatives of the provincial government in the collection of taxes, the execution of public works and the supervision of the municipalities. Regarding these district governments the act contains two very interesting sections which confer on the legislative council of the province, on the one hand, the power practically to abolish a district government, and entrust the powers exercised by it to military officers, and, on the other hand, the authority largely to increase its power and to make of it a body corporate. These sections read as follows:

Sec. 28. The legislative council shall have the power to insure the gradual transition from military to civil control in those districts in which, in its judgment, it would not be wise immediately to establish complete civil government, by providing that the powers herein conferred upon district officers shall be exercised and performed in any district under the general

supervision of the military commander of the United States troops serving in that district for any period which it may deem wise, and such period of transition may be decreased or lengthened in the discretion of the legislative council by subsequent act.

Sec. 30. The legislative council shall have power, in its discretion, to make the government of a district a corporation, with power to sue and be sued, to have and use a corporate seal, to hold property, real and personal, to make contracts for labor and material needed for district purposes, and to incur such other obligations as may be expressly authorized by law, and, if it deems wise, to constitute a district board to consist of the governor, the secretary and the treasurer who shall be the governing board of the district. It shall not be necessary that such law shall uniformly apply to all districts, but differing provisions may be made applicable to different districts as the legislative council shall determine.

The Philippine commission of course retains full force to annul or amend all acts of the legislative council.

The system of government that has thus been created for the Moro provinces is in a number of respects the most interesting one that has been created by the Philippine commission. Its most striking features are the extent to which authority has been delegated by the commission to the provincial government and the provision by which both military and civil authority may be exercised by the same persons. In regard to the first point the commission has in fact, subject to its paramount authority to approve or disapprove of the action taken, turned over the entire powers of government, provincial, district and municipal, to the government created by its act. It has, moreover, given to

this government the character more of a central than of a local government, inasmuch as provision is made for district and municipal governments which are subordinate to it and directly under its supervision and control, and the character of which it is expressly authorized to modify as, in its wisdom, it deems proper. The commission, in other words, has taken much the same action in regard to this territory that Congress has taken regarding the government of the entire archipelago. It has recognized that the conditions existing are so peculiar that intelligent and proper action can only be expected from authorities who are in actual contact with the difficulties to be met. The law in fact offers one of the most instructive examples of the delegation of authority that can be found in the history of the government of territory to which this volume relates.

Government of Island of Negros. To make complete our study of the action taken by the American authorities for the creation of provincial or district governments, a few words should be said regarding the early effort made by the military authorities to organize a civil government for the island of Negros. Although the effort then made to give the people a measure of participation in the management of their own affairs proved a failure and had to be abandoned, the experiment is nevertheless of interest as bearing upon the general question of the ability of the people concerned to appreciate and practice self-government. Conditions in that island differed from those prevailing in other parts of the archipelago from the fact

that at the outset its inhabitants welcomed American occupation. Upon the outbreak of war between the United States and Spain, the people of Negros rose and drove out the Spaniards, and on November 12, 1898, requested Captain Glass of the U. S. S. "Charleston" to raise the American flag and assume sovereignty. As the Treaty of Paris was then pending, Captain Glass was unwilling to assume this responsibility and denied the request. Subsequently, after Iloilo had been taken by the American forces, February 12, 1899, the natives themselves organized a provisional government, raised the American flag and sent a commission to General Miller, commanding at Panay, requesting recognition. This commission, upon General Miller's advice, proceeded to Manila. Troops were then sent, and Bacalod, the capital of the island, was occupied by the United States March 4, 1899. A military governor was appointed for Negros, with instructions to aid the people in their efforts to establish a civil government. In July delegates met in a constitutional convention, after the American method, and framed a constitution, which was sent to the President of the United States through the military governor. The constitution, pending action by the President, was approved by the military commander for the Philippines and was promulgated as General Order No. 30 on July 22, 1899. The system of government thus established provided for a military governor, to command the troops, a civil governor, an advisory council to be elected by the people, and judicial and departmental officers, to be appointed by the military governor. The latter official

was also given full power to veto any act of the civil governor. Elections were held fairly successfully, in spite of threatened trouble and a protest by the defeated candidates for office; and the civil government was duly organized November 6, 1899. Municipal laws were passed and municipal elections held; a system of taxation was devised; public works and education received attention; and, in general, governmental affairs were attended to.

This experiment, in spite of the favorable auspices under which it started, soon proved a failure. In 1901 the military governor was forced to report that he was confronted with a prospective revolution, headed by the civil governor himself; that taxes had to be collected by force; and that little real progress had been made in the direction of self-government. General Otis, accordingly, requested the Philippine commission to prepare a simplified form of government, giving the people a voice in the administration of their affairs, but leaving full control in American hands. This the commission did by the passage of acts Nos. 119 and 120, April 20, 1901, extending the main provision of the provincial and municipal acts to the island. Regarding the experiment that had been tried, the commission reported: "The flat failure of this attempt to establish an independent native government in Negros, conducted as it was under the most favorable circumstances, makes it apparent that here, as well as in the less favored provinces, a large amount of American control is at present absolutely essential to a successful administration of public affairs."

CHAPTER VIII

GOVERNMENT OF THE PHILIPPINES: MUNICIPAL GOVERNMENT

Organization of Municipal Government by Military Authorities. The necessity for taking action in respect to the administration of local affairs presented itself the moment that Manila was occupied by our military forces. Until more satisfactory provision could be made the general commanding issued a proclamation continuing in force existing laws and local institutions until they should be subsequently modified by military orders. The work of devising a more satisfactory system, however, was immediately entered upon. The first step of importance in this direction was the preparation and promulgation, August 8, 1899, of what is known as General Order No. 43, Series 1899. This order set forth a rough plan of local government which the commanding officers in their respective districts were directed to put into effect as rapidly as possible. According to this scheme, the general forms of government and means of raising revenue that had been in use under Spanish rule were continued, but provision was made for the exercise of a very rigid supervision by the military authorities over the workings of the whole system.

This order was confessedly a temporary measure.

A few months later, on January 29, 1900, General Order No. 18 of that year was issued providing for the organization of a board with the duty of formulating a general plan of municipal government which, in the words of the order, should be "as liberal in character as existing conditions permit." This board consisted of Señor Arrellano, chief justice of the Supreme Court; Florentino Torres, attorney-general of the islands, and three American judicial officers. After two months work the board reported a general statute for the organization of municipalities, which was promulgated as General Order No. 40 of March 29, 1900.

The plan of government there elaborated is of lasting importance, both because it represents the joint efforts of Americans and Filipinos in the work of devising a system of local government that should correspond to American ideals and yet at the same time be of a character that would meet the legitimate desires of the people and be applicable to local conditions, and because in it are to be found the essential features of local government which were afterward adopted by the Philippine commission and incorporated by it in its general municipal act. As regards the grant of self-government it represents a far more liberal scheme than that provided for by General Order No. 43 of 1899. As expressed by the report of the board, which bears indications of having been prepared by one of the members native of the island:

> For the first time the Filipino people are to exercise the right of suffrage in the election of municipal officials—a right only slightly restricted by conditions which have been imposed

for the purpose of rewarding as well as encouraging the people in their just and natural aspirations to become educated and worthy to enjoy all the benefits of civilization. With the new municipalities a really autonomous and decentralized municipal government will be established in the towns, since no provincial assembly is created in the capitals of provinces or districts and each municipality is the legitimate administrator of the affairs of its town and will keep, preserve and expend for the municipal welfare the municipal funds.

Under this system provision was made for a "presidente," or mayor, and a municipal council, to be elected by the qualified voters. The electoral franchise was conferred upon all males over twenty-three years of age who could read, write and speak English or Spanish, or who paid taxes to the amount of thirty pesos annually, or who held certain offices prior to August 13, 1898, the date of the capture of Manila. To this government was entrusted the management of all local affairs, subject only to a general supervisory power which was given to the governors of the provinces, to whom appeal in most matters could be made from action of the municipal authorities, and from whose decision an appeal in turn could be taken in important matters to the chief executive of the island. From the standpoint of the natives, the most important features of this scheme of government were that all municipal revenues should be devoted exclusively to municipal purposes; that the right to elect their own officers should be enjoyed by the inhabitants of each municipality; and that the intervention of the provincial and insular authorities, instead of being in the way of directing what should be done, should be restricted to that action which was necessary in order

to correct abuses or to decide matters appealed to them. The policy was thus one of non-interference on the part of the superior authorities as far as possible.

The work of organizing municipal governments under General Order No. 43 of 1899 proceeded rapidly. Upon the promulgation of General Order No. 40 of 1900 a good many of these towns were reorganized under it, though a certain number were still left under the provisions of the first order, as it was thought that the conditions there prevailing did not warrant the immediate extension to them of the more liberal system. When the first Philippine commission was appointed it co-operated with the military authorities in the work of organizing local governments under the latter order.

General Municipal Act of 1901. This was the situation of affairs when the second Philippine commission entered upon the performance of its legislative duties on September 1, 1900. It will be remembered that this commission was specially directed in the instructions that were issued to it "to devote their attention in the first instance to the establishment of municipal governments in which the natives of the islands, both in the cities and in the rural communities, shall be afforded the opportunity to manage their own local affairs to the fullest extent of which they are capable, and subject to the least degree of supervision and control which a careful study of their capacities and observation of the workings of native control show to be consistent with the maintenance of law, order and

loyalty,'' and that ''in the establishment of municipal governments the commission will take as a basis of their work the governments established by the military governor under his order of August 8, 1899, and under the report of the board constituted by the military governor by his order of January 29, 1900, to formulate and report a plan of municipal government of which his Honor Cayetano Arrellano, president of the audiencia, was chairman, and they will give to the conclusions of that board the weight and consideration which the high character and distinguished abilities of the members justify.'' Acting on these instructions, the commission, after a very thorough study of the whole question, devised not only a scheme of municipal government, but elaborated what was in effect a general municipal code setting forth in detail both the form of government that should be given to municipalities brought under its provisions and the manner in which all functions necessary for the conduct of local affairs should be performed. This measure was enacted January 31, 1901, under the title ''A general act for the organization of municipal governments in the Philippine Islands.'' It is, however, popularly known, and is so referred to in subsequent legislation, simply as the ''Municipal Code.''

This act, which, as has been said, is an elaborate and detailed measure, may be said to embrace four classes of provisions, relating respectively to: the form of government proper; the electoral franchise, the manner of registration of voters and the conduct of elections; the assessment and collection of a general tax

upon property for both municipal and provincial purposes and other matters pertaining to the raising and expenditure of municipal revenues; and the circumstances and conditions under which municipalities shall be brought under the provisions of the act. Finally, running all through the act, are provisions granting to the provincial and insular authorities the power to exercise a control or supervision over the manner in which the municipalities perform the various functions entrusted to them. Each of these classes of provisions will be considered in turn.

Before doing this, however, two matters affecting its general character should be stated. The first of these is that, as in Porto Rico, the system of municipal districts embracing both urban and rural settlements that was found in existence was retained. Secondly, and this should always be borne in mind, the act was prepared in conjunction with, and enacted at practically the same time as, the general provincial act, the former being passed January 31, and the latter February 6, 1901. The two acts must therefore be read in connection with each other. This is especially true in respect to all those provisions relating to the relations between the provincial and the municipal governments, and the manner in which the operations of the latter are controlled by the former or by the insular government.

Turning now to a consideration of those provisions which relate to the form of government, the act provides that in each municipality brought under its provisions the government shall be vested in a presidente, or mayor, a vice-president and a municipal council to

be elected every two years by the qualified voters of the municipal district. The term of office begins to run the first Monday in January succeeding the election. In starting the system, however, the law provided that the alcaldes and the municipal lieutenants elected or appointed under General Order No. 40, 1900, should continue to serve as presidents and vice-presidents until January 1, 1903, and until their successors had been duly chosen and had qualified. The date of the first general election was fixed at the first Tuesday of December, 1901. After the first election the councillors of each municipal council are directed to divide themselves by lot into two classes of equal number, the first of whom shall hold office for one and the second for two years, the purpose of this provision being that the membership of the councils shall be renewed by one-half each year. The number of members of the councils is made to vary according to the population of the municipality: those having twenty-five thousand inhabitants or over, having eighteen members; those having eighteen thousand, but less than twenty-five thousand inhabitants, fourteen; those having over ten thousand, but less than eighteen thousand inhabitants, ten, and those having less than ten thousand inhabitants, eight.

To be qualified to hold any of these offices of president, vice-president or councillor, a person must be a duly qualified voter of the municipality, be not less than twenty-six years of age, have had a legal residence in the municipality during at least one year prior to the date of the election, and be able intelligently to speak, read and write either the Spanish or English

language or the local dialect. No ecclesiastic, soldier in active service, person receiving a salary from provincial, department, or other governmental funds, or contractor for public works in the municipality, however, may be elected or appointed to municipal office.

The duties of the president are varied and important, the policy of concentrating responsibility upon that officer being definitely adopted. In addition to the possession of the general duty of seeing that subordinate employees properly perform their duties and that municipal ordinances are observed, which are always imposed upon the chief executive of a municipality, he has the following very important functions to perform. He is the presiding officer of the municipal council and casts the deciding vote in case of a tie; all ordinances must be approved by him, though his veto may be overruled by a two-thirds vote of all of the members of the council; he nominates, and a majority of all the members of the council concurring, appoints, the municipal secretary and all non-elective officers, except the treasurer, and all employees that may be provided for by law or ordinance; and he may suspend for cause for a period not exceeding ten days, and, with the consent of a majority of all the members of the council, dismiss, any such officer or employee. He also sits as a magistrate for the trial of all cases involving the infraction of municipal ordinances, and, when the guilt of the accused is established, may impose as penalties fines not exceeding two hundred pesos or imprisonment not exceeding six months, or both. When the penalty imposed is a fine exceeding fifteen pesos or imprisonment exceeding fifteen days

the accused may appeal from his decision to the court of first instance. The complaint may be brought either by a police officer or a private citizen. He, finally, has important duties in connection with the holding of elections, the chief of which are to prepare the list of electors, and, with the vice-president and the treasurer, to serve as a board to pass upon questions arising in connection with the enrollment of voters. Incidentally he is authorized to use as the symbol of his office a black cylindrical cane with a gold head, gilt ferrule and silver cord and tassel. He must make an annual report setting forth the most important events which have occurred in the municipality during the year, one copy of which must be deposited with the municipal secretary, and one copy, after it has been submitted to the council, transmitted to the governor of the province in which the municipality is situated.

The vice-president acts as substitute for the president in case of the absence of the latter or his temporary disability, and becomes president for the unexpired portion of the term in case of his death or permanent disability. By a rather unusual provision, he is *ex officio* a member of the municipal council, in which body he is assigned as the representative of the barrio, or district, in which the municipal offices are situated.

The municipal secretary, as has been stated, is appointed by the president, with the consent of a majority of the members of the council. He is both clerk of the municipal council, of whose meetings he must keep a record, and general secretary for the munici-

pality. In the latter capacity, he must keep the civil register of the municipality, in which must be recorded all births, deaths and marriages; countersign and certify to the correctness of all warrants ordered by the council to be drawn on the treasurer; and, generally, attend to the business correspondence of the municipality.

The treasurer, under the provision of the act as first passed, was appointed by the president with the consent of the council. By an amending act passed on November 30, 1903, however, it was provided that thereafter he should be appointed by the provincial treasurer with the approval of the provincial board. This amending act also provides that his salary shall be fixed by the provincial board instead of by the municipal council. He may be removed by the board at any time for cause. The duties of the municipal treasurer are to receive, keep and disburse the municipal funds. In the performance of these duties he is under the direct control and supervision of the provincial treasurer. That officer not only has power at all times to inspect his books, but must audit his accounts and count his cash at least once a quarter, and also furnish him at cost all the blank books, bonds, warrants, receipts and other forms that are required by him for the performance of his duty. This latter provision is of special importance, as through it uniformity in practice on the part of all the municipalities is secured.

In respect to salaries, the act provides that the members of the council shall serve without pay and that the salaries of the president, municipal secre-

tary and municipal treasurer shall be as fixed by the council, provided that they do not exceed certain amounts fixed in the act, varying, according to the population of the municipality, from six hundred to twelve hundred pesos in the case of the president, from three hundred to six hundred pesos in the case of the secretary, and from three hundred to eight hundred pesos in the case of the treasurer.

An interesting provision is that by which it is declared that no person elected to a municipal office may decline to serve unless he can give satisfactory evidence that he is physically unable to perform the duties of the office, is more than sixty-five years of age, or has discharged the duties of the office for two previous terms. Violations of this provision may be punished by imprisonment for a term not exceeding six months. Re-election to the same municipal office is prohibited except after an interval of two years. Vacancies in the office of any elective municipal officer are filled by a majority vote of the members of the council. The term of office of all appointive officers is until the end of the term of the president appointing them and until their successors are appointed and qualify, unless they are sooner removed.

The municipal councils, as has been pointed out, are composed of from eight to eighteen members, according to the population of the municipality, two of whom are the president and the vice-president. The councillors are elected on a general ticket, but it is the duty of the council upon its organization to assign each councillor to one or more barrios (or a part of a barrio in case there are fewer barrios than councillors)

with the duty of keeping the people in such district informed as to the acts of the council or other governmental measures which directly concern them by posting suitable notices in conspicuous places. The council must hold regular meetings every two weeks and special meetings as often as occasion demands. The president or any two councillors may call a special meeting by giving written notice to the other members. A majority of the members elected constitute a quorum to do business, but a majority vote of all the members is necessary for the passage of any ordinance or of any proposition creating indebtedness. The council can determine its own rules of procedure, punish its members for disorderly conduct, and with the concurrence of two-thirds of the members suspend or expel a member for cause, and by a majority vote of all the members elect his successor.

The duties of the councils are analogous to those of municipal councils in the United States. They are set forth in the act in considerable detail, where they are divided into the two classes of obligatory and optional duties. Among the most important obligatory duties are those of establishing and fixing the salaries of municipal officers and employees, subject to the limitation on the maximum salary that may be granted the president, the secretary and the treasurer, as above noted; of making appropriations for municipal expenditures; of providing for the erection and maintenance of buildings for the use of the municipality; of creating a service for the inspection of steam boilers; of regulating the lighting and sprinkling of streets, the numbering of houses and lots, the con-

struction and maintenance of streets, sidewalks, piers, etc.; of abating nuisances; of establishing and maintaining a police department; of inspecting weights and measures; of maintaining municipal prisons; of establishing and maintaining schools; of establishing a post office, and a system for the collection and delivery of mails in harmony with the postal system established by the general government; of prohibiting intoxication, smoking of opium, disorderly conduct, and like offenses against public morality and order; of establishing and maintaining slaughter-houses and markets, and inspecting and regulating the sale of meat and other food products; of licensing and regulating the sale or other disposition of intoxicating liquors at retail, and determining the amount of such license subject to such limitations of the general law as may afterward be enacted; and, finally, of providing by ordinance for the levying of taxes for municipal purposes within the limitations fixed by the law.

In addition to these obligatory duties, of which only some of the more important have been mentioned, the municipal council is empowered to make provision for the care of the poor, sick, or those of unsound mind; to provide for the erection of public stables, bathing establishments, wharves, cemeteries, and for the establishment of ferries, and to fix reasonable fees for their use; to construct and maintain water works; to license, tax or prohibit cock fighting and the keeping or training of fighting cocks; to license, tax or close cockpits; to license public vehicles kept for hire, cafés, restaurants, hotels, lodging houses, billiard

tables, theatrical performances, and the like; and, upon a majority vote to suspend, and upon a two-thirds vote of all the members, to remove any non-elective officer.

The provisions regarding the qualifications for the electoral franchise are of especial importance, as these qualifications not only govern in municipal elections, but, as will be remembered, in accordance with the act of Congress for the government of the Philippines, constitute the qualification for the right to vote for members of the insular legislature and for commissioners to the United States. The municipality is in fact the unit of the governmental system from the electoral standpoint. According to law, the right to vote is granted, with the exceptions noted below, to all male persons twenty-three years of age or over not citizens or subjects of any foreign power, who have had a legal residence in the municipality in which they desire to vote for a period of six months immediately preceding the election, and who meet any one of the following conditions: (1) have held prior to August 13, 1898, the date on which Manila was taken, the office of municipal captain, gobernadorcillo, alcalde, lieutenant, cabeza de Barangay or member of any ayuntamiento; (2) own real property to the value of five hundred pesos, or pay not less than thirty pesos in taxes annually; or (3) are able to speak, read and write English or Spanish. The exceptions are the ordinary ones disqualifying from voting those persons who have taken and violated an oath of allegiance to the United States, are in arms against the sovereignty of the United States, make any contribution of money

or render valuable aid in any other way to persons in rebellion, are insane or feeble-minded, or have been deprived of the right to vote by sentence of a court of competent jurisdiction. Finally, the interesting and important provision is made that any person who is delinquent in the payment of public taxes assessed subsequent to August 13, 1898, shall lose his right to vote while such delinquency continues.

The machinery that is provided for the registration of voters and the conduct of elections is similar in its general features to that found in the United States. During the first five days of the month next preceding the month in which any general election is to be held the president of the municipality is required to post a proclamation setting forth the place where and the time at which the election will be held, notifying all persons qualified as electors to appear before the municipal secretary during the first fifteen days of the month in which the proclamation is dated, for the purpose of taking the elector's oath. Between the fifteenth day and the twentieth day of the month the president must then prepare from the oaths thus taken an alphabetical list of the qualified electors and post it in the main entrance of the municipal building as well as in certain other places. Accompanying each list must be a notice specifying a term of five days prior to the election, during which any qualified elector may demand his proper enrollment as such, or the exclusion from the list of qualified electors of the name of any person whom he believes not to be possessed of the right to vote. These requests must be addressed to the president, who must refer them

to a board consisting of himself, the vice-president, and the municipal treasurer. The questions thus raised must be decided by the board before the date of the election and the decision communicated in writing to the persons interested.

The elections themselves must be held in the city hall and are presided over by a board of election judges consisting of three qualified electors who are not candidates for any office at the election and who, together with two tellers possessing like qualifications, are designated in writing by a majority vote of a board consisting of all the members of the municipal council who have the longest unexpired terms of office. In the case of the absence of any member of the board of judges, or of the teller, or his disqualification at any time, the vacancy is filled by a majority vote of the entire number of remaining judges and tellers. Elections are by secret ballot. Within the room where the election takes place only the board of judges and tellers and qualified electors are allowed to enter. Tables, with blank ballots and writing materials, separated from each other by screens, are provided for the convenience of the voters. Blank ballots with the names of the several offices and places for inserting the names of the persons voted for must be provided by the provincial governors. Each elector must fill out his ballot at one of the tables, fold and deposit it in the ballot box, first stating to the board of judges his name and the barrio, or district, in which he resides. When he has voted the chairman of the board must then check his name from the official list of voters. Only one person at a time may

enter the enclosed space between the screens for the purpose of preparing his ballot, except that where the elector cannot read or write he may be assisted by the two tellers. A plurality of votes is sufficient to elect. After the close of the election the ballots are canvassed by the board and the results certified by it to the provincial board. A period of three days is given in which formal protest in writing may be made by any resident of the municipality to the board against the election. Such protests must be forwarded to the provincial board, which has power to make investigation and to hear all necessary evidence in relation to it. If there are no complaints, or if the complaints are found to be without foundation, the provincial board must, within seven days after the receipt of the election certificate, direct the newly elected officers to qualify and enter upon their duties on the day fixed for such act. If, however, the board finds that illegality has been committed in the election by any officer, or that any candidate returned is not eligible, it must so declare in writing with a statement of the reasons, and order a special election to fill the vacancy thus occasioned. The law specifically directs that in determining the legality of the election the provincial board shall ignore irregularities or informalities which do not prevent the declared result from being the actual will of the electors.

The municipal code embodies a chapter, entitled "Taxation and Finance," which is practically a law in itself and sets forth in details the manner in which municipalities shall derive their revenues. These revenues are made to consist of: (1) an ad

valorem tax upon real estate and its improvements of not less than one-fourth, and not more than one-half, of one per centum of its value; (2) receipts from the granting of fishery privileges; (3) fees for the issuing of certificates of the ownership of large cattle and of the transfer of same; (4) income from the public institutions of the municipality, such as slaughter-houses, ferries, cemeteries, etc.; (5) rentals for the privilege of establishing and maintaining such institutions; (6) fees for tuition in institutions of instruction other than primary schools; (7) license fees for the right to keep billiard tables, own dogs, train or keep fighting cocks, keep horses or carriages for hire, etc., and to sell at retail intoxicating liquors in quantities of not more than five gallons; (8) fines; and (9) an annual tax which, it is stated, is for the purpose of protecting the roads of the municipality and of the province from injury, of three dollars Mexican upon each draft cart the wheels of which have tires less than two and one-half inches in width, and an annual tax of two dollars Mexican upon each cart the wheels of which are rigid with the axles to which they are attached, and an annual tax of five dollars Mexican upon each cart having both such tires and axles. This latter tax is to be collected by the provincial treasurer, and one-half of the proceeds are to be paid into the municipal treasury and the other one-half to be retained by the provincial treasurer. All taxes, licenses and fees must be fixed by ordinance of the council and may be changed from year to year as circumstances require. The municipal council is specially prohibited from imposing a tax in any form

upon goods and merchandise carried into or out of the municipality. The purpose of this prohibition is to do away with the old "octroi" or "consumo" tax, which it was held was an injurious tax as bearing directly upon the articles of necessity consumed by the poorer classes.

In regard to the collection of taxes, the most significant feature is that, with the exception of a few insignificant miscellaneous receipts, all the receipts of the municipalities are collected by the provincial instead of the municipal treasurers. The municipal treasurer thus becomes in effect but little more than a disbursing officer and deputy of the provincial treasurer. It is the duty of the provincial treasurer to be present in the municipality, personally or by deputy, at least two days in each month during the year, for the purpose of receiving payment of all revenues due the municipality from any source whatever, except fines, tolls from ferries operated by the municipality, and market fees, the daily receipts from which are collected by the municipal treasurer. A failure to pay the tax within a certain period, as prescribed by law, subjects the delinquent taxpayer to the penalty of an additional tax of fifteen per centum of the amount of the original tax due. Enforcement of the payment of taxes can be made within fifteen days after the tax becomes delinquent by the seizure of the personal property of the delinquent and its sale after due advertisement. In case no personal property, or an insufficient amount of personal property, can be found, the provincial treasurer or his deputy may proceed to the attachment and sale of a sufficient portion of the real property of the delinquent to pay all taxes and

charges due. The delinquent taxpayer after such sale is given one year in which to redeem his property. The assessment of a tax against the taxpayer is also made a lawful indebtedness of the latter and may be enforced by a civil action in any court of competent jurisdiction. The farming or leasing of the collection of taxes, which had prevailed to some extent in the past, is expressly prohibited.

The provisions regarding the manner in which the municipalities shall prepare and vote their annual budgets making provisions for the income and expenditures of the ensuing year are of special importance, for it is in regard to this matter that the weakness of local government is especially evident. Such is the desire on the part of the municipal authorities in the Philippines to spend money, and such is their disregard of future difficulties, that unless due precautions are taken and proper restrictions imposed, all or a great majority of the municipalities would provide for greater expenditures than their resources warrant, and would therefore in a short time become burdened with a larger indebtedness than they could well pay. The only way to prevent this condition of affairs, which would mean a practical failure of local government, is either by having the law impose proper restrictions, or by providing that the action of the local authorities in respect to the formation of their budgets shall be subject to control by the superior authorities, or by a combination of the two. The last named method is adopted. The provisions regarding this matter go so directly to the essence of the extent to which self-government has been granted, that they

may quite properly be given in full in the language of the act itself. The section regarding this matter reads:

a. During the month of January of each year, the council shall prepare in duplicate a report giving:

b. An inventory of all buildings, and other property, real and personal, belonging to the municipality.

c. An itemized estimate of the revenue of the municipality from all sources during the current year, with a statement opposite each item of the amount realized from that source during the last preceding year.

d. An itemized estimate of the ordinary expenses of the municipality for the current year with a statement opposite each item of the corresponding expenses of the last preceding year. The estimated ordinary expenses shall not exceed the estimated resources. This estimate shall include a statement of outstanding indebtedness, if such exists.

e. An estimate of such extraordinary expenditures, if any, as may be required through unusual necessity or to make permanent improvements. Such estimate shall state the approximate total expenditures by reason of such necessity or improvement, the amount which it is expected to expend during the current year, and the source or sources from which it is proposed to secure the necessary funds; also an itemized statement of extraordinary expenditures for the last preceding calendar year. The report hereinbefore provided for shall be in such form as may be prescribed by the provincial treasurer.

f. Such report when approved shall be attested by the president and municipal secretary, and shall be forwarded to the provincial treasurer in duplicate for his action. If the provincial treasurer shall, upon consideration, find that the taxes levied will produce the estimated revenue, and that the actual expenditures provided for in the report will not exceed in the aggregate the estimate thereof, then he shall approve the same and shall forward one of the copies of the report, with his approval endorsed thereon, to the president, to serve as a guide to the municipality in the administration of its finances.

If after the provincial treasurer shall have begun the collection of taxes, he finds that the amount to be actually collected will fall short of the estimate, he shall certify this fact to the council, with a statement of the probable shortage, and it shall be the duty of the council to reduce its subsequent expenditures so as to bring this aggregate within the available income as reported by him.

g. Expenses not provided for in the annual estimate can only be incurred and had upon authorization by the provincial treasurer at the request of the municipal council.

It will be seen from this reproduction of the provision of the law relative to the preparation of the budget, that such budget does not become effective until it has been submitted to the provincial treasurer for his approval, and that before such approval is given it is the duty of that officer to satisfy himself that the actual receipts and expenditures will probably correspond with sufficient accuracy to the estimates that have been made. Provision is then further made by which the budget can subsequently be changed if conditions warrant. Although the law does not exactly specify what shall be done in case of all possible contingencies, there can be no doubt that its general effect is to give to the provincial treasurers the power of exercising a rigid control over the action of municipalities in the preparation of their budgets, and that through this power he can prevent expenditures exceeding receipts and the municipality consequently becoming burdened with unpaid obligations. Again, the municipal law not only makes provision as regards the income of municipalities, but also imposes certain restrictions upon the manner in which it shall be expended. Of the land tax, the pro-

ceeds realized by a rate of one-fourth of one per centum, at least, must be devoted to the support of the public primary schools and the provision or erection of suitable school buildings. The municipalities thus have available for other purposes the proceeds of a rate of not more than one-fourth of one per centum even when the maximum rate permitted by law is imposed. As already noted, only half of the proceeds from the tax on carts is received by the municipalities, the remaining half being paid into the provincial treasuries.

We turn now to a consideration of the provisions of the act which set forth the extent of its applicability, and the conditions that must be met by a community in the future in order to bring itself within its terms. All municipalities that had been organized under General Order No. 40, 1900, were immediately brought under the act without any action being necessary on their part. As the scheme of government created by the act follows so closely that which had been constituted under this order, it was provided that the existing officials should exercise the powers conferred upon them by the act until January 1, 1903, after which the government should be administered by the officials elected or appointed in pursuance of the provisions of the act.

Municipalities organized under General Order No. 43 of 1899 may be reorganized and brought under the act in two ways: either by the granting by the commission of a petition to that effect addressed to it by a municipality, signed by a majority of all the members of the municipal council, or by the commission acting

on its own initiative. In the latter case the commission must, as the first step, constitute an "organization committee" of six members consisting of a chairman appointed by the commission, the president and vice-president of the municipality and three other persons selected by the chairman. The commission, upon its constitution, must issue a proclamation fixing the time and place for holding an election, specifying the offices to be filled, and notifying all persons desiring to qualify as electors to appear before the committee during the first fifteen days after the publication of the proclamation for the purpose of taking the elector's oath. The election shall then be held, in the manner already described for the holding of elections.

Any ten or more residents of a territory of a former pueblo or municipality which has no lawfully organized government may petition the commission for the organization of a municipality under the act. If this petition is granted the commission must appoint a chairman, who, together with five residents of the pueblo having the qualifications of an elector selected by him, shall constitute a committee of organization. This committee shall then proceed to hold elections in the manner above prescribed. The commission may also, without waiting for the receipt of a petition, itself proceed to the appointment of a chairman of a committee of organization and to the organization under the act of an unorganized municipality. Municipalities of less than two thousand inhabitants may be incorporated under the provisions of the act, or may be attached as a barrio, or district, to an adjacent incorporated municipality, upon the municipal council of the

latter granting a petition addressed to it signed by a majority of the qualified electors of the municipality desiring to be annexed. A barrio or borrios with an aggregate population of more than two thousand may be incorporated as a separate municipality upon the commission granting a petition to that effect signed by at least two-thirds of the qualified voters of the district affected. The city of Manila is expressly excepted from the provisions of this act, a special form of government, as has been stated, having been devised for it. In like manner the act does not apply to settlements of non-Christian tribes, the conditions there being such as also to require special treatment.

Provincial and Insular Control. The feature that, as has been repeatedly pointed out, more largely than any other determines the essential character of any scheme of local government in a dependency is the extent to which control over the acts of such government is vested in superior political authorities and the manner in which this control is exercised. In the Philippines provisions relative to this matter are found both in the municipal and general provincial acts, and the two must be read together in order to understand the exact relation in which the municipal and the provincial governments stand to each other. We have already seen in our consideration of provincial governments that the main function of these governments is to serve as an authority through which a more direct supervision may be maintained over municipal action. The most important way in which they do this is probably through the power possessed by the provin-

cial treasurers over almost all of the financial acts of the municipalities. That officer thus not only appoints, with the consent and approval of the provincial board, municipal treasurers and specifies in detail the manner in which they shall perform their duties, but himself collects nearly all municipal taxes. More important still, all municipal budgets must be submitted to him for his approval before becoming effective, and he has large powers to see that a proper budgetary balance is maintained. As regards financial matters, therefore, the control of the provincial governments is practically absolute. Their power in respect to ensuring that proper officials are chosen for the administration of affairs is almost equally great. It will be remembered that it is the duty of the provincial governor at least once in every six months to visit each municipality of his province for the purpose of hearing complaints against municipal officials and determining whether affairs are being properly managed. Upon being satisfied that everything is not as it should be, he has the power summarily to suspend any official whom he believes to be at fault. This action must be reported to the commission, which has the power either to reinstate the official or convert his suspension into dismissal. In this connection it should also be noted that the commission reserves to itself full powers on its own initiative to remove any municipal official found to be inefficient, guilty of misconduct, or disloyal to the United States. No officer, however, may be removed until he has been informed of the charges against him and has been afforded an opportunity to be heard in his defense. Upon such removal

the commission may, where it deems that public safety demands such action, appoint the successor to the person so removed, but where such action is not deemed necessary the vacancy is filled as are other vacancies.

As originally passed, the act did not make any provision whereby direct control could be exercised by the provincial authorities over the acts of a legislative character of the municipalities. The necessity for such control, however, soon became apparent, and on March 12, 1903, an act was passed by which it was provided that certified copies of all ordinances or resolutions of the municipal council and of all formal executive orders of the president should immediately upon their promulgation be sent to the provincial governor. That officer is given the duty of examining them with a view to determining whether they represent action beyond the legal powers of the council or mayor. If, in his opinion, such is the case, he is required to call upon the provincial fiscal for his opinion regarding the validity of the ordinance or order in question, and if his opinion is to the effect that the act is illegal—that is, in violation of the powers conferred by the municipal code upon the council or president—he must declare the act void. An appeal from this decision may be made to the civil governor. It is provided, however, that this power of nullifying a municipal act by the provincial authorities shall not in any way be deemed to take away from the proper judicial tribunal the power to declare an act void for want of statutory authority whenever such a question may arise in the trial of any case.

The supervising power of the provincial govern-

ments are also manifested in various other ways. Thus the provincial board acts as a board of tax appeals and as a board to hear appeals relative to election protests and to order new elections if it is thought necessary. The local police are subject to the orders of the provincial government, and the law officer of the municipalities is the provincial fiscal. At almost every point, in fact, it is found that the provincial government possesses the power to prescribe, modify or nullify the acts of the municipal authorities. It is significant that where the original act has been subsequently amended, these amendments have had for their object the strengthening rather than the weakening of these powers. Notwithstanding the extent of these powers of the provincial governments, it would be a mistake to assume that no decided step has been taken toward the development of self-government in the islands. As in Porto Rico, the power for the great part is one of supervision rather than of intervention. It is thus latent rather than constantly in evidence. The actual work of government is performed by natives, and to just the extent to which they exhibit a capacity properly to administer governmental affairs the provincial authorities are able to hold their own powers in suspension.

Municipal Government in Provinces under Nueva Vizcaya Act. For the province of Nueva Vizcaya and the other two or three provinces to which the Nueva Vizcaya provincial act has been extended a special system of municipal government has been created. This was done by an act passed April 9, 1902. The

system here established follows very closely that of the general municipal code, the chief departures of importance being those having for their purpose the vesting of greater powers of control in the provincial government. This is especially evident in the section which has been quoted in our consideration of the Nueva Vizcaya provincial act, whereby not only is it made the duty of the provincial governor to pass upon all municipal ordinances and important executive acts, but that official is himself authorized to take the initiative and promulgate orders having the force of law when a municipality fails to perform any of its essential functions. It is also of importance to note that owing to the generally backward condition of the population no attempt is made narrowly to restrict the franchise for municipal elections. Thus the franchise is extended with the usual disqualifications for disloyalty, feeble-mindedness, etc., to all male persons eighteen years of age or over, having a legal residence in the township for six months preceding the election, who are not citizens or subjects of any foreign power. As in the general municipal code, delinquent taxpayers also are disqualified as long as such delinquency exists.

A local government act for the province of Benguet was passed November 22, 1900. This act is similar in most essential respects to the Nueva Vizcaya act and indeed furnished the model upon which the latter was drawn. It, however, presents several features unlike those existing in the other local government acts. No provision is there made for a municipal treasurer, the duties of that office being imposed upon the presi-

dent or mayor. Another unusual provision is that which provides that persons failing to pay their taxes may be fined, and if unable to pay the fine may be compelled to work it out on public works. A third novel provision is that whereby the newly elected presidents of the municipal district must, on January 1 of each year, assemble at the capital of the province to confer with the provincial governor and also to elect a "popular representative," whose duty it is "if the people of the province shall at any time feel themselves to be severely aggrieved and shall be unable to obtain relief from the provincial governor, . . . either in person or by written communication, to lay this case directly before the chief executive of the insular government."

Government of Non-Christian and Uncivilized Tribes. In all the provinces, as has been said, special provision had to be made for the government of those communities which were composed of non-Christian and uncivilized tribes. In all the municipal or local government acts clauses have therefore been inserted exempting such communities from the provisions of the act and providing that the provincial governor, with the approval of the secretary of the interior, shall have the power to appoint officers for the administration of their affairs in so far as any attempt at all is made by the government to exercise a control over them. The following section of the local government act for the province of Nueva Vizcaya relative to this matter shows the character of the provision that has been made in practically all cases:

Whereas a large majority of the inhabitants of Vizcaya are members of non-Christian tribes who have not progressed sufficiently in civilization to make it practicable to bring them under any form of municipal government, the provincial governor is authorized, subject to the approval of the secretary of the interior, in dealing with these non-Christian tribes, or members thereof, to appoint officers from among the members of said tribes, to fix their designations and badges of office, and to prescribe their powers and duties: provided that the powers and duties thus prescribed shall not be in excess of the powers conferred upon the township officers by this act. Subject to the approval of the secretary of the interior, the provincial governor is further authorized, when he deems such a course necessary in the interest of law and order, to direct members of such tribes to take up their habitation on sites of unoccupied public lands to be selected by him and approved by the provincial board. Members of such tribes who refuse to comply with such direction shall upon conviction be imprisoned for a period not exceeding sixty days. The constant aim of the governor shall be to aid the people of the several non-Christian tribes of his province to acquire the knowledge and experience necessary for successful local popular government, and his supervision and control over them shall be exercised to this end, and to the end that law and order and individual freedom shall be maintained. When in the opinion of the provincial board any settlement of members of a non-Christian tribe has advanced sufficiently to make such action practicable it may be organized under the provisions of sections 1 to 67 inclusive of this act as a township, and the geographical limits of such township shall be fixed by the provincial board.

Government of Manila. We have seen that the city of Manila is specially exempted from the operation of the general municipal code. The reason for this is that the conditions existing in this city are so unlike those in the other municipalities that they can properly be met only by the creation of a system of

government specially drawn to meet them. In the first place, Manila, with its quarter of a million inhabitants, is a city of the first rank, and consequently has to do with such problems as protection against fire, public health regulations, building regulations, maintenance and care of streets, disposal of refuse, etc., problems that are found in all large cities, and which for their proper solution require an elaborate and efficient administrative service. In the second place, the problem of the government of the city is complicated through the fact that the city includes among its population over fifty thousand Chinese, besides a large number of other nationalities, concerning the protection of whom special care has to be taken. The city is also a seaport and manufacturing city and thus has large commercial and individual interests requiring special attention. Finally, the fact that Manila will probably always constitute the seat of government, both for civil and military purposes, makes it essential that the central government should at all times exercise a control over its affairs to an extent not necessary in the case of other municipalities.

For these and other reasons it would have been a mistake to have conferred upon the city the full measure of local self-government that is contained in the general municipal law. The commission, accordingly, decided that the city should be incorporated under a special charter in which provision should be made for the direct control or administration of the city's affairs by the American authorities. Brigadier-General George W. Davis, who had been the provost mar-

shal general of Manila during the months immediately preceding the substitution of civil for military government in the islands, was entrusted with the task of preparing a draft of a charter for the city. General Davis was admirably qualified for this duty, both on account of his natural attainments and the experience which he had had as military governor of Porto Rico and as provost-marshal-general of Manila. His draft, accompanied by a report explaining its provisions, was submitted to the commission on June 13, 1901, and, after consideration and amendment in certain important particulars, was enacted as Act No. 185, August 3, 1901.

The scheme of government thus provided is modeled directly after that possessed by the District of Columbia, although, as will be later seen, certain variations, the most important of which is that making provision for an advisory board, have been introduced. Following the form of government for the District of Columbia, the government of the city is vested in a municipal board. This board, according to the original act giving a charter to the city, was made to consist of three members appointed by the civil governor by and with the consent of the commission, and removable in the same manner. On October 9, 1903, an amending act was passed by which it was provided that the membership of the board should be increased to five through the addition to it of the president of the advisory board and the city engineer as *ex officio* members. In this board are concentrated executive and legislative functions. The citizens of the city are given no direct participation in their gov-

ernment or in the selection of officials by which their public affairs shall be administered. One of the members is designated at the time of his appointment as president of the board. Provision is also made for a secretary to the board, who is appointed by the board subject to the provisions of the civil service act, and acts as its secretary and generally performs the duties of a city clerk.

For the actual administration of affairs provision is made for five departments: a department of engineering and public works; a police department; a law department; a department of fires and building inspection; and a department of assessment and collections; but the superior control over the manner in which the officers thus called for perform their functions is retained by the municipal board, in which is vested the supreme executive authority. The heads of these departments, as well as all important bureau chiefs, are appointed in accordance with the provisions of the civil service act.

For the performance of its legislative duties the board is required to meet every day except Sundays and legal holidays. These sessions must be with open doors, unless otherwise ordered by a majority vote of its members. It must keep a record of its proceedings, and must cause all ordinances passed by it to be published in two daily newspapers of the city, one published in English and the other in Spanish. The board has power to pass all ordinances that may be necessary for the proper administration of the city, such, for example, as those relating to the collection of taxes and other revenue; the regulation of the conduct of

the different trades and industries of the city; the control of the businesses whose operations present elements of danger or features detrimental to the safety or comfort of the people; the construction and improvement of streets, wharves, piers, parks, and the prosecution of other public works; the abatement of public nuisances; the creation and maintenance of a police force, a fire department and a health service. In general, it has power to "make such ordinances and regulations as may be necessary to carry into effect and discharge the powers and duties conferred by the act, and to provide for the peace, order and safety and general welfare of the city and its inhabitants." It may fix penalties for the violation of city ordinances, to consist of fines not to exceed one hundred dollars in amount or imprisonment not to exceed six months for each offense.

As in the District of Columbia, there is one very important legislative function that is denied to the board, that, namely, of the fundamental power to pass appropriations. Just as Congress acts as the supreme legislative body for the District of Columbia in this respect, so the Philippine commission acts in the same capacity for Manila. The duties of the board in respect to this matter are limited to the making of estimates and recommendations. The charter act thus provides that "on or before the tenth day of June of each year the board shall prepare and present to the civil governor for transmission to the commission in itemized form and in detail: (*a*) an inventory of lands, buildings, and other property, real and personal, belonging to the city, including cash in the

treasury; (*b*) a statement of the liabilities of the city; (*c*) an estimate of the revenues of the city from all sources for the ensuing fiscal year, with a statement opposite each item of the amount realized from such sources during the preceding twelve months; (*d*) an estimate of the ordinary expenses for the ensuing fiscal year, with a statement opposite each item of the corresponding expenses during the preceding twelve months; (*e*) an estimate of such extraordinary expenditures as may be necessary for any purpose, the approximate total expenditure recommended, and the amount which it is expected to expend during the ensuing fiscal year; also an itemized statement of the extraordinary expenditures during the preceding twelve months." Acting upon the information presented by these estimates and data, the commission proceeds to make appropriations for the expenses of the city. Of the money thus appropriated, thirty per cent is paid out of insular funds and the remaining seventy per cent out of revenues of the city itself. This is likewise the system in the District of Columbia, though there the general government pays half of the expenses. As in the case of the District of Columbia, no provision is made for a local treasurer or comptroller, the duties of these two officers being performed by the insular treasurer and auditor. The city, however, has its own disbursing officer.

In addition to the income ordinarily derived by cities from such sources as licenses, permits, fines, etc., provision is made for the levying and collecting of a tax upon the real estate of Manila of one per cent of

its assessed value. The system of assessment of property is substantially the same as that provided for in the municipal code for municipalities generally. In Manila, however, the municipal board constitutes the board of tax appeals. Special provision is made that one-fourth of all moneys realized from this real estate tax shall be devoted exclusively to the support of free public primary schools and to the erection and maintenance of suitable school buildings. Additional appropriations for this purpose, however, may be made by the commission from the general resources of the city.

For the hearing and adjudication of minor actions, the city is divided into two districts, with a municipal court for each. The judge and the clerk of each court are appointed in accordance with the provisions of the civil service act. These courts have exclusive jurisdiction over all criminal cases arising under the ordinances of the city, or under the penal laws of the Philippine Islands where the offense is committed within the police jurisdiction of the city and the respective districts, and the maximum punishment is by imprisonment for not more than six months, or a fine not exceeding one hundred dollars, or both. They have concurrent jurisdiction over crimes, misdemeanors, and violations of ordinances committed on the waters of the Pasig River or Manila Bay within the police jurisdiction of the city. These courts may also conduct preliminary examinations for any offense without regard to the limits of punishment and may release or bind over any person charged with an offense for his appearance before the proper tribunal.

They have no jurisdiction over civil affairs except in respect to the forfeiture and collection of bonds given in the cases or proceedings pending before them. Provision is also made for the appointment by the civil governor, by and with the consent of the commission, of two justices of the peace and two auxiliary or substitute judges, who have the general powers and duties provided by the general act of the commission relative to justices of the peace in the archipelago.

Probably the most important, certainly the most interesting, departure from the scheme of government provided for the District of Columbia is that feature by which provision is made for an "advisory board." This board consists of eleven members appointed by the civil governor, by and with the advice and consent of the commission, one being appointed for each of the eleven city districts as they existed under the Spanish government. The duties of this board cannot be better stated than by reproducing the wording of the act itself. The paragraph relative to this matter reads:

> It shall be the duty of the advisory board to bring to the attention of the municipal board the special needs of the city and its inhabitants, and it shall make such suggestions and recommendations relative thereto as it may from time to time deem necessary. It shall consider petitions presented by residents or inhabitants of the city and it shall report its recommendations thereon to the municipal board. It shall furnish such further information relating to existing conditions within the city and the several districts thereof as may be requested by the municipal board. In case it shall deem further legislation by the commission necessary for the good of the city and its inhabitants it shall make proper recommendations in relation thereto. The municipal board shall not have power to pass

any ordinances fixing license fees, or involving the liability of the city in any sum exceeding ten thousand dollars ($10,000), or denouncing as an offense the violation of any city ordinance, and imposing a penalty and fine or imprisonment therefor, or directing the condemnation of any property for the use of the city, or making any contract for improvements in the city which shall probably involve an expenditure of more than ten thousand dollars ($10,000), without having first submitted for comment, discussion and recommendation the proposed ordinance to the advisory board, and received from the advisory board its recommendations thereon. Should the advisory board, however, delay action upon the ordinance thus presented to it for its consideration and recommendation, for more than two weeks after the same shall have been received and receipted for by its secretary, the municipal board may proceed to adopt the ordinance without awaiting action by the advisory board. No person shall be eligible to appointment as a member of the advisory board from a particular district unless he is a bona fide resident of such district at the time of appointment.

The board must meet weekly for the consideration of matters requiring its attention, and each member receives six dollars for each such meeting that he attends. Provision is made for a secretary, whose duty it is to keep an accurate record of the proceedings of the board.

CHAPTER IX

GOVERNMENT OF SAMOA, GUAM AND THE PANAMA CANAL STRIP

Samoa. Whatever may be the disinclination of the American public to make use of the word "colonies," and whatever may be the special status of Porto Rico and the Philippines, in the Samoan Islands and Guam the United States has had to do with colonies in the strictest sense of the term. The same is, to all intents and purposes, true of the strip of land in Panama, control of which has been acquired by the United States for the construction of an interoceanic canal. In the creation of systems for the administration of affairs in these possessions, the United States has had to deal with conditions far less complicated and difficult than those presented in the case of the dependencies that we have already considered. The reason for this lies in the fact that, in the case of these smaller islands, the United States has had to solve but the single problem of organizing an efficient administrative system. In neither case were the conditions such as to render advisable, nor were there any moral obligations resting upon the United States, immediately to create a system of local government and make provision by which the management of affairs should to a considerable extent be entrusted to the inhabitants of the islands. While it is true that it is

the policy of the United States here, as elsewhere, to spare no pains to develop in the people governed the capacity for self-government, for years to come efforts in this direction will have to be largely educational in character rather than through the immediate grant of powers of participation in governmental affairs.

For over a quarter of a century the United States has been interested in the Samoan Islands. The harbor of Pago Pago on the island of Tutuila was ceded to it for use as a naval and coaling station in 1872. This cession was afterwards confirmed by a treaty signed at Washington January 17, 1878, ratifications of which were exchanged on February 11 and proclaimed February 13 of the same year. This treaty also gave to the United States certain commercial rights and extraterritorial consular jurisdiction. Great Britain and Germany in like manner acquired interests in the islands. Owing to the inability of the Samoan government to maintain order, it became necessary for the United States, Great Britain and Germany to intervene at various times in order to protect the rights of their respective citizens. In 1889 insurrection in the islands developed to such an extent that these three powers decided jointly to assume control of affairs. A treaty between them was accordingly negotiated at Berlin on June 14, 1889, which was assented to by Samoa April 19, 1890, and proclaimed by the President of the United States May 21 following. By this treaty the Samoan islands were declared to be neutral territory under the tripartite protectorate of the three signatory powers, though, in the language of the treaty, "the three

powers recognize the independence of the Samoan government and the free right of the natives to elect their chief or king and choose their form of government according to their own laws and customs." To render the control of the three powers assuming the protectorate effective, the treaty, however, provided for the establishment of a supreme court of justice for the islands, the judge of which should be appointed by the Samoan government upon the nomination of the three powers acting in accord, or failing in their ability to do this, of the King of Sweden and Norway. This court was given not only exclusive and final jurisdiction in respect to strictly judicial matters, but also large and extremely interesting powers to enforce the conduct of affairs generally. To this court had thus to be referred for final decision all disputes in respect to questions arising under the provisions of the treaty, "the rightful election, any dispute relative to, or appointment of, king or of any other chief claiming authority over the islands; or respecting the validity of the powers which the king or chief may claim in the exercise of his office," and any difference arising between either of the treaty powers and Samoa which the parties were unable to adjust by mutual accord. Finally the chief justice of the court was given the very unusual function for a judicial officer to "recommend to the government of Samoa the passage of any law which he shall consider just and expedient for the prevention and punishment of crime and for the promotion of good order in Samoa outside of the municipal district, and for the collection of taxes without the district."

A special section of the treaty provided for the organization of a system for the local administration of the municipal district of Apia, the chief city and capital of the islands. The government of this district was placed in the hands of a municipal council of six members and a president elected by the qualified voters, but it was provided that "all ordinances, resolutions and regulations passed by this council before becoming a law shall be referred to the consular representatives of the three treaty powers sitting conjointly as a consular board, who shall either approve and return such regulations or suggest such amendments as may be unanimously deemed necessary by them. Should the consular board not be unanimous in approving the regulations referred to them, or should the amendments unanimously suggested by the consular board not be accepted by a majority of the municipal council, then the regulations in question shall be referred for modification and final approval to the chief justice of Samoa."

This arrangement for the exercise of a tripartite control over Samoan affairs proved unsatisfactory and worked badly almost from the start. Matters came to a head in 1898 through the dispute arising out of the selection and recognition of a king as the successor of Malietoa, who died in that year. To straighten matters out and make more satisfactory arrangements for the future, the United States, Great Britain and Germany agreed upon a joint commission, consisting of a representative of each power, to visit the islands for the purpose of undertaking the provisional government of the islands, and of devising

a new and permanent system of government. This commission was completely successful in putting an end to the existing troubles, whereby the islands were divided into two hostile factions, and in elaborating a scheme of government upon which all three members of the commission could agree. This proposed system is very interestingly described by Mr. Bartlett Tripp, the American commissioner, in his final report to the secretary of state, submitted August 7, 1899.

Before this report could be acted upon, however, a proposition was made by Germany for the powers to abandon the attempt jointly to look after the government of the islands, and instead to make a division of the islands so that each of the three should have exclusive control over the territory assigned to it. This proposal was agreed to by the United States and Great Britain, and was incorporated in a treaty which was signed December 2, 1899, and ratified and promulgated February 16, 1900. By the terms of this treaty Great Britain and Germany renounced all their claims and rights in the islands of the Samoan group east of longitude 171 degrees west of Greenwich. These included the islands of Tutuila, Aunuu, Ofu, Olosega Tau and Rose. Of these, the island of Tutuila is much the most important and, moreover, contains the valuable harbor of Pago Pago. It has a population of from three to five thousand persons.

In view of the fact that in the treaty of 1889 the three powers recognized "the independence of the Samoan government and the free right of the natives to elect their chief or king, and choose their form of

government according to their own laws and customs,'' it would seem that the assent of the natives was necessary to this arrangement, by which their destinies were to be determined. A formal cession of the islands to the United States by the native chiefs was accordingly secured April 17, 1900. Though this cession was not formally accepted for several years, the President nevertheless proceeded by executive order, dated February 19, 1900, that is, before the cession was made, to designate the Samoan islands as a naval station and to direct the secretary of the navy to take the necessary action for the establishment and maintenance there of the authority of the United States. This the department did by designating an officer of the navy to proceed to Tutuila and assume charge.

The history of the steps that were taken leading up to its actual assumption of control by the United States has been given with some particularity as showing how entirely the whole responsibility for the organization of a form of government for the islands has been shifted, first by Congress, through its failure either to accept the deed of cession or to enact any legislation for the islands, upon the secretary of the navy, and secondly by that official upon a subordinate naval officer. When Commander B. F. Tilley was directed to assume control he was given no instructions relative to the action he should take for the government of the territory. He was thus compelled upon his own authority to devise and put into force a system of government. Even when this was done, and when he requested the approval of his action by the secretary

of the navy, that official declined to do so formally, but instructed him to go ahead using his best judgment until otherwise directed.

Under the conditions above described all governmental powers are at present concentrated in the hands of the naval officer designated by the secretary of the navy as commandant of the United States naval station Tutuila. In the exercise of this power the first commandant, B. F. Tilley, promulgated on May 1, 1900, a general order setting forth the system of government that should be in force until other provision was made. The form of government thus established is an exceedingly interesting one from the standpoint of the present study as giving the best example of a case where the United States has pursued the policy of allowing a people in a low stage of development to continue to the greatest possible extent to manage their own affairs. As the successor of Commander Tilley expressed it, "The form of government is such that the Samoans practically govern themselves, with the commandant in general charge to see that the laws are enforced, and to decide questions generally—through the high court—when the natives cannot agree among themselves." Commander Tilley himself, in speaking of the character of the policy that he thought it wise to pursue in making provision for the government of the island, writes: "I considered that the best way to govern these people was to let them, as far as possible, govern themselves, by continuing their good and time-honored customs and gradually abolishing the bad ones. The Samoans are still in the patriarchal state; the head of the household is su-

preme ruler of his own little family, and these chiefs in turn form a council which govern each village. Each town is practically independent of the others, though there is a parliament or 'fono' for every district, which, however, used to do little more than talk. My idea was to modify this system so as to adapt it to the requirements of civilized government, without at the same time interfering with the deeply rooted customs of the people or wounding their susceptibilities in any way. To achieve this I followed the plan which has proved so successful in Fiji of appointing native chiefs as local magistrates or governors in each district. . . . After much investigation of family claims, the right men were selected and the natives themselves elected them magistrates. Then a general council was held and the natives began to institute their own reforms, acting usually upon my own suggestions as to plans for improvement."

The following account of the system established by the order of May 1, 1900, will show the manner in which these ideas were carried out. At the head of the government is of course the commandant of the naval station. He is declared to be the maker of all laws and to have the power to make and control all appointments. To assist him in these functions as chief executive provision is made for a "chief secretary of native affairs," whose duties are to act as the secretary of the commander; to exercise a supervision over the way in which the district governors and other officials perform their work; to serve as a district judge and sit with the Samoan district judges in their respective districts; and generally to perform such

services as may be delegated to him by the commander, whose personal representative he is.

For purposes of local administration the islands of Tutuila and Aunuu are divided into two districts known as Falelima East and Falelima West, and the three islands forming the Manua group constitute a third district known as Manua. For each of these districts there is appointed by the commander a governor to hold office during the pleasure of the former. This officer is responsible for the maintenance of good order and the collection of taxes in his district. He must visit each village at least once every three months with each county chief in his county for the purpose of inspecting the roads and seeing that the chiefs enforce all laws and ordinances. Each district is divided into counties in such a way that each, as nearly as possible, embraces the village or villages with their adjoining land comprised in each "faalupega." The hereditary chief of each of the counties retains his position as the chief officer and presides at the county meetings. He is also a justice of the peace and may sit with the magistrate of any village, but has no voice in the decision of the court. He may be removed from office by the commandant either directly or upon the request of a majority of the chiefs of his county for misconduct, disobedience or neglect of duty, in which case a member of his family must be named by the commander as chief in his place. Every effort is made to impress upon these chiefs that they will be held responsible for the good conduct of affairs in their respective counties.

Within the counties each village has its own chief

selected in the following manner. The village council nominates a candidate from among the village chiefs, which nomination is sent to the district governor. That officer then forwards it with his approval or disapproval to the commander, who may confirm or reject it. In case of any dispute regarding a nomination, the commander appoints as he sees fit. The duty of each village chief is to look after the administration of affairs in his village, and he is subject in all respects to the orders of the governor of his district. There were already in existence village councils consisting of the hereditary chiefs and their "fallupolu." These were continued in operation with practically no change as regards their powers. They constitute the bodies by which ordinances regulating local affairs are formulated. The order reads that they "shall retain their own form or forms of meeting together to discuss affairs of the village, county or district according to their own Samoan custom. The county and district councils may recommend laws which they deem expedient and necessary for the county or district for enactment by the commandant upon his approval." The councils are specially charged with the supervision of the charities of their respective districts, the planting of the lands by the people, the making and clearing of roads, and all matters of a local nature. Finally the sweeping provision is made that "the customs of the Samoans not in conflict with the laws of the United States concerning the naval station shall be preserved unless otherwise requested by the representatives of the people."

Prior to the promulgation of the order the Samoans

had but a very primitive system for the administration of justice. For the detection and trial of offenses "the chiefs and 'tulafales' constituted themselves as a 'confessional box,' before whom each person had to make a solemn statement of all offenses he had committed since the last day of confession. The days of confession were appointed by the chiefs and 'tulafales' and they were chiefly required on occasions when a town would be preparing for a feast or similar function and it would be necessary to raise funds." Upon confession, the offender was then compelled to pay so many pigs, fine mats or other articles of which the village at the time might be in need. This system was abolished, and in its place provision was made for village courts, district courts and a high court, the judges of all three of which are appointed by the commander. The village courts are presided over by magistrates and have jurisdiction over petty offenses, with the power to impose penalties of not exceeding a fine of ten dollars or imprisonment of one month. Each district court is presided over by a district judge and a foreign judge, but if there is a difference between the two, the opinion of the foreign judge prevails. The jurisdiction of these courts extends to all civil matters between natives, when the amount in dispute exceeds ten dollars, to disputes between foreigners, when the amount does not exceed two hundred and fifty dollars, and to the more important criminal offenses. Either of the judges has power to appoint assessors to sit with the court for the purpose of assisting it in the determination of the facts, but without a voice in making decisions. This

system, it will be remembered, was afterwards adopted in the Philippines. Appeals lie from this court to the high court. The high court consists of the commander as president, two associate judges, and a judge advocate, though the commander and any one of the associates may hold court. It is a court of record and has jurisdiction over all civil suits concerning real property, disputes between foreigners, when the amount involved exceeds two hundred and fifty dollars, criminal offenses for which imprisonment of six months or over can be ordered, all charges of treason or murder, all crimes and offenses committed by judges or magistrates, and all other matters not otherwise provided for.

The foregoing system of government has been elaborated by subsequent orders and instructions setting forth more exactly the manner in which the various officers shall perform their duties. The commander, as the legislative authority, has issued ordinances having the force of law regarding a large number of important matters. He has thus created a revenue system, according to which taxes are paid in native produce (mostly copra), regulated marriage and divorce, regulated the sale of intoxicants, etc.

Generally speaking, this system of government seems to have met the necessities of the situation and to have worked well. Speaking of the results obtained, Commander Tilley, in his annual report submitted in 1901, says: "Everything connected with the government here, organized as indicated in station ordinance No. 5, has been found to work smoothly and with efficiency. The natives have taken the greatest

interest in their new duties and have learned them very quickly. As a result of the new system the villages are in much better order, there are much larger planted areas, and the roads are everywhere kept clean and in good condition. The people themselves are quiet and contented. . . . Summing up the results of all that has been done since Tutuila has been annexed by the United States, it will be found that there is now in this island an organized and successful government under which the natives are quiet and happy and are advancing rapidly on the road to a higher civilization."

Guam. The island of Guam, formerly a colonial possession of Spain, was seized by the United States navy during the war with Spain in 1898. According to a census taken in 1901, it contains between nine and ten thousand inhabitants, distributed in fourteen towns and villages. It is unnecessary to give any extended account of provisions that have been made for the government of the island. The legal situation of the island is precisely that of Samoa. All governmental powers are vested in the hands of the naval officer in command of the naval station. The extent to which this authority extends is amusingly illustrated in some of the orders issued by the first commander. He thus, for example, issued orders that every inhabitant who was without a trade or habitual occupation should have at least twelve hens, one cock and one sow, and plant enough vegetables for the necessities of himself and family, and that every adult resident of the island should learn to write his or her

name before July 1, 1900, unless prevented from doing so by physical disability. The actual problem of government, however, was somewhat different from that presented in the case of Samoa, as the Spanish Crown had extended to the island laws in relation to most matters requiring legal regulation and had created a system for the administration of public affairs. These laws and institutions were continued in force except where conflicting with the powers of the commander or the authority of the United States.

Panama Canal Strip. The strip of land on the Isthmus of Panama through which the interoceanic canal will run is the latest territorial acquisition of the United States. By act of June 28, 1902, Congress authorized the President of the United States to acquire all the rights of the French Panama Canal Company and also perpetual control of a strip of land on the Isthmus of Panama not less than six miles in width extending from ocean to ocean. He was also authorized by the same act to appoint, by and with the consent of the Senate, an Isthmian Canal Commission of seven members, who should in all matters be subject to his direction and control, to have charge of the construction of the proposed canal. In pursuance of this act, the rights of the Panama Canal Company were acquired for the sum of forty million dollars, and a convention between the United States and the Republic of Panama was signed, ratifications of which were exchanged February 26, 1904, by which Panama agreed, upon the payment to it of ten million dollars, to grant to the United States, "First, the perpetual

use, occupation, and control of a certain zone of land, land under water including islands within the said zone, at the Isthmus of Panama, all to be utilized in the construction, maintenance and operation, sanitation and protection of the ship canal, of the width of ten miles extending to the distance of five miles on each side of the central line of the route of the canal, and the use, occupation and control of other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance and operation, sanitation and protection of said canal or of any auxiliary canals or other works necessary and convenient for the same purpose; also the islands of Perico, Naos, Culebra and Flamenico, situated in the bay of Panama; and, second, all the right, powers, and authority within the zone, auxiliary lands and lands under water which the United States would possess and exercise if it were the sovereign of the territory granted, to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power and authority.''[1]

The action authorized by this act and treaty being consummated, Congress, on April 28, 1904, passed another act authorizing the President to assume possession of the property acquired. By the same act the President was authorized, ''for the purpose of providing temporarily for the maintenance of order in the canal zone and for maintaining and protecting

[1] Letter of the President placing the Isthmian Canal Commission under the supervision and direction of the secretary of war and defining the jurisdiction and functions of the commission, May 9, 1904.

the inhabitants thereof in the free enjoyment of their liberty, property and religion, to delegate to such person or persons as he may designate, and to control the manner of their exercise, all the military, civil and judicial powers, as well as the power to make all needful rules and regulations for the government of the canal zone, and all the rights, powers, and authority granted by the said canal commission to the United States, until the close of the Fifty-eighth Congress.''[1] It will thus be seen that Congress has again pursued the policy that it followed when Louisiana and Florida were acquired, of placing at the outset all governmental powers in the hands of the President, to be exercised by him through such persons and in such manner as he may deem best.

In pursuance of this grant of authority, the President, by letter of May 9, 1904, formally placed the whole control over the administration of affairs in the canal zone, both as regards the construction of the canal and the government of the territory, under the direction of the War Department. This letter goes on to enumerate the specific powers that the Isthmian Canal Commission, acting under the supervision of the War Department, shall have. These include the authority to make all needful rules and regulations for the government of the zone, to establish a civil service under which appointment shall, as nearly as is practicable, be made by a merit system, and to legislate on all rightful subjects of legislation not inconsistent with the laws and treaties of the United States. For this latter purpose the commission shall sit as a

[1] Idem, p. 2-3.

legislative body and any four or more members shall constitute a quorum to do business. All laws, rules, regulations, etc., must be submitted to the secretary of war and if not approved by him shall cease to be in force. As regards local affairs, the latter provides that municipal laws shall be administered by the ordinary tribunals substantially as before the change. Major General George W. Davis, a member of the canal commission, who had already served as military governor of Porto Rico and later of the Philippines, was designated as the first governor of the canal zone. This is as far as the work of the organization of a government for the zone has, up to the time of the present writing, proceeded; although it is reported that the commission and Governor Davis have elaborated a fundamental law providing for the details of the administration of public affairs which is now awaiting formal action and approval by the secretary of war.

The remaining insular possessions of the United States, Wake Island, Midway or Brooks Island, Howland and Baker islands and the Guano islands, are either totally or practically uninhabited, and no provision has consequently been made for their government.

CHAPTER X

GOVERNMENT OF THE DISTRICT OF COLUMBIA

That a consideration of the government and administration of dependent territory should necessarily include that of the territory in which the capital of the nation itself is located is a rather remarkable fact. As it is, however, that territory has to-day as much the status of dependent territory and is as completely subject to the control of Congress as any territory or dependency over which the General Government now exercises authority. Both on this account and because the final form of the government that has been given to this federal territory is unlike that of the government of any other political division, except in so far as it has furnished a model for the government of Manila, a description of the action taken by the United States for its administration constitutes a unique and unusually interesting study in forms of political organization and administration.

The Constitution of the United States in enumerating the powers of Congress gives to that body the right "to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States." Among the reasons

for this grant of plenary powers to Congress over the administration of the affairs of the national capital was that of insuring that the legislative and executive functions of the government should be exercised without risk of interference. Trouble in this respect had been experienced by the Continental Congress, which, in 1783, had been compelled to transfer its sessions from Philadelphia in order to evade a hostile demonstration by a part of the revolutionary army for the purpose of hastening the payment of money due them for their services, the authorities of the city of Philadelphia and of the State of Pennsylvania at the time acknowledging their inability to furnish adequate protection.

The choice of the particular site for the permanent capital was the subject of a long and bitter controversy, during which the fate of the nation itself seemed for a time to be at stake. The reasons for this disagreement lay in the jealousy which existed between the Northern and Southern States, each section fearing that if the capital were located in the other that that section would thereby have its influence over national affairs greatly increased. Final agreement upon the site now constituting the District of Columbia was, as is well known, obtained as the result of a compromise between the contending interests. Supported by Jefferson, Alexander Hamilton secured the acceptance of an agreement by which the North, in return for the support by the South of the proposition for the assumption of the state debts by the General Government, withdrew its opposition to the Potomac site, which was the location representing the choice of the South. This agreement, in so far as the location

of the seat of government was concerned, was put into effect by the passage by Congress of an act, approved July 16, 1790, and an amending act, approved March 3, 1791, accepting the cessions of land lying on both sides of the Potomac River which had already been made by the legislatures of Maryland and Virginia. The definite location of the ten-mile square tract that was to constitute the federal district was made by commissioners, the appointment of whom was provided for by the Act of 1790. These commissioners also had charge of the laying-out of a city in which the public buildings were to be located and the actual affairs of the government conducted. The preparation of the plans for the city itself was entrusted by Washington to Major Pierre Charles L'Enfant, a French engineer, who had attracted the attention of Washington by his skill in designing military fortifications. The signal ability with which he performed this task, making possible the development of the present beautiful city of Washington, is well known. The portion of the district ceded by Virginia was subsequently, in 1846, retroceded to that State and the district was consequently reduced to its present area of a little over sixty-nine square miles.

In view of the fact that Congress deemed it so desirable that the seat of the National Government should be located in a district over which it should have complete jurisdiction, it is a matter of surprise that for so long a time little effort was made by it to work out any special form of government to meet the peculiar conditions existing. Not even was the attempt made to create a single form of government that should

apply to the whole district. The district embraced two parts, lying on opposite sides of the Potomac River, composed of the portions of territory selected from the cessions made by the States of Maryland and Virginia, respectively. In accepting these cessions, the Act of 1790 not only provided that the laws of these States should continue in force in the parts of the district ceded by them, respectively, until Congress should otherwise provide, but allowed these States to continue both to administer the government of such portions and to legislate in respect to them. This right was availed of by both Maryland and Virginia during the succeeding ten years, or until 1801, when legal jurisdiction was formally assumed by the United States. The portions ceded by Virginia and Maryland included within their limits the towns of Alexandria and Georgetown, both of which were already in possession of corporate governments. The governing body for the territory ceded by Maryland and outside of the limits of Georgetown, including the site of the Federal City, was the Court of Prince George County, Maryland, and the functions of government were actually performed by what was known as the "Levy Court." This court was composed of seven members, selected by the governor of the State from among persons holding the office of justice of the peace. The government of the territory ceded by Virginia and lying outside of the limits of Alexandria was in like manner vested in a levy court, though the powers of that body were not in all respects the same as those of the Maryland body. To a certain extent the commissioners to survey and locate the Federal

City were given governmental powers, and may in a way be considered as the first governmental authority of the city of Washington. There was, thus, at the outset a multiplicity of governing authorities for the district.

If we except the slight powers given to these commissioners, the first act of Congress in relation to the government of the District of Columbia, as it soon came to be designated, was that of February 27, 1801. This act divided the district into the two counties of Alexandria and Washington, corresponding to the portions ceded by Virginia and Maryland, and created a circuit court to take the place of the county courts of Maryland and Virginia. The system of government through levy courts, however, was not changed to any material extent, though the appointment of justices of the peace was vested in the President. On May 3 of the following year the city of Washington was erected into a municipality under a special charter. This charter provided for a mayor, to be appointed annually by the President, and a city council of twelve members, to be elected annually by the people, the electoral franchise being limited to taxpayers. Provision was also made for a second chamber of five members, to be chosen from "the whole number of councillors elected by their joint ballot."

This form of government under a charter continued in existence for sixty-nine years, or until 1871, though numerous changes in the character of the government were made from time to time. The most important of these changes were those providing: that both chambers of the city council should be chosen by dis-

tinct ballot, made in 1804; that the mayor should be elected by the council by joint ballot, instead of being appointed by the President, made in 1812; that the mayor should be elected by popular vote at the time of the election of the council, made in 1820; and the broadening of the franchise and increase of the corporate powers relative to the levying and collection of taxes, made in 1848. In the meantime Congress had also, from time to time, passed acts modifying in one way or another the system of government under which the affairs of Georgetown and Washington counties were administered. It would lead us, however, into too much detail to attempt to follow the changes introduced. Suffice it to say that Georgetown continued to be governed under a municipal charter, while the affairs of the county of Washington were managed by the levy court until 1871.

As the population of the District of Columbia increased, and especially after Washington and Georgetown became in fact one continuous city, the existence of this divided authority gave rise to much unnecessary confusion. In 1871 Congress, accordingly, abolished the existing governments in all three of the political divisions into which the District was divided and in their place established a single municipal government for the whole district. This government was in effect a territorial form of government. Governing power was vested in a governor, secretary, board of public works, board of health, and a legislative assembly consisting of a council of eleven members and a house of delegates of twenty-two members. The District was also given a delegate in the House of Representatives.

The members of the House of Delegates and the delegate to Congress were elected by the qualified voters, and the other officers, including the members of the upper house, were appointed for terms of four years by the President.

The Board of Public Works proved to be the feature of this government. Under the influence of Alexander R. Shepherd, the governor of the District and *ex-officio* President of the Board, a vast scheme of public improvements was pushed through with great energy. For the first time the city was given something approaching a proper equipment of paved streets, sewers, waterworks, etc. In doing this, however, the public debt was increased in three years by millions of dollars and private property was so burdened with special assessments that in many cases the result was practical confiscation. Much, if not all, of the debt thus incurred, it was also claimed, was created without due warrant of law. Complaint against the action of Governor Shepherd in consequence of these facts became so strong that Congress, by an act approved June 20, 1874, abolished the territorial form of government that it had created three years preceding, and vested practically all governmental powers in a commission of three persons to be appointed by the President. Whatever may have been the facts in the case, Governor Shepherd has been exonerated from all charges that his action was actuated by other than public-spirited motives, and his services in transforming Washington from what was but little more than a squalid town into a beautiful city are now fully appreciated.

The commission appointed in 1874 constituted what

was known as the temporary government by commissioners. It was almost in effect the putting of the District's affairs into the hands of receivers. Although at the time intended to be but a temporary measure, the advantages of this system from the standpoint of efficiency was so great that Congress, by Act of June 11, 1878, erected it, with certain modifications, into a permanent government, which has continued practically unchanged until the present time. Of all the forms of government that this District has enjoyed this last one is much the most interesting. In character it represents a radical departure from any form of government that Congress had created for other Territories or Dependencies. Under it the population of the District is completely disfranchised, no vote being allowed it either in the election of local or national officials. Not even is provision made for the representation of the District in any way in Congress. All legislative powers in respect to the District's affairs are retained by Congress, and that body thus constitutes the local legislature of the District. For this purpose the two houses have by their rules set aside certain days for the consideration of District measures, though this apportionment of time is frequently departed from.

Executive power is vested in a board of three commissioners, appointed by the President, two of whom must be selected from civil life and at the time of their appointment must be citizens of the United States and have been actual residents of the District for three years immediately preceding their appointment. The third commissioner must be an officer of the army

having at least the rank of captain and have served not less than fifteen years in the corps of engineers. The term of office of the civilian commissioners is three years from the date of their appointment. The engineer commissioner is detailed from the army, from time to time, for an indefinite term. The President also has the authority to detail other engineer officers of lower rank to act as assistants to the engineer commissioner. To this board as thus constituted is given unusually large powers. Not only has it general direction over all the administrative affairs of the government and the power of appointing practically all District employees, but it can also exercise large powers of a quasi-legislative character. It can, thus, prepare and enforce regulations regarding building, plumbing, etc., and such regulations as are reasonable and usual for the protection of life, health, and the comfort of the people. It can also abolish any office, consolidate two or more offices, and reduce the number of employees. For the practical administration of affairs the board organizes by the election of one of its members as President and then apportions the work among its members so that each has immediate direction over particular classes of the public service.

The financial system of the District is no less unique than that of the government proper. The commissioners are required each year to submit to the secretary of the treasury of the United States an estimate of the amount of money that will be required to defray the expenses of the government during the next fiscal year, which the secretary is directed to transmit to Congress with his recommendation regarding the

extent to which such estimates meet his approval. On this, as a basis, Congress passes a single act making provision for all the expenses of the government for the year. To meet this expenditure the organic act declares that "to the extent to which Congress shall approve of said estimates, Congress shall appropriate the amount of fifty per centum thereof; and the remaining fifty per centum of such approved estimates shall be levied and assessed upon the taxable property and privileges in said District other than the property of the United States and of the District of Columbia." The reason for the General Government thus assuming half the expense of the government of the District lies in the fact that, according to estimate, the value of the real estate and its improvements constituting public property, and therefore exempt from taxation, is equal to all the taxable property of the District. Furthermore, it is felt that it would not be equitable to impose upon the local taxpayers the full burden of maintaining and caring for the broad streets and avenues and numerous parks in a manner befitting the capital of a great nation, besides being called upon to meet other extraordinary expenses resulting from the fact that the District constitutes the seat of the General Government. In point of fact, however, Congress has repeatedly departed from this half-and-half system by providing in special acts that the expense of certain public improvements should be met entirely from the revenues proper of the District.

The judiciary of the District consists of a court of Appeals of three judges, a Supreme Court of six judges, a police court of two judges, and justices of

the peace, all appointed by the President of the United States and confirmed by the Senate. The justices of the peace are appointed for a term of four years, the judges of the police court for six years and the judges of the Supreme Court and Court of Appeals during good behavior. The Supreme Court is a court of general jurisdiction. Appeals in important cases lie to the Court of Appeals and from it further appeal can be taken to the Supreme Court of the United States when the matter in dispute exceeds five thousand dollars or there is involved the validity of any patent or copyright or any statute or authority exercised under the United States.

In practical operation this form of government has given exceedingly good results—so good, in fact, that the District of Columbia is often alluded to as the best governed community in the United States. Certainly it has been remarkably free from the scandals that have characterized many other cities. In general, also, affairs have been managed with rare efficiency and economy. The provision of the organic act by which one of the commissioners must be an officer of the engineer corps of the army insures that public works will always be in charge of an official having had special training for such work. The absence of a local legislature also relieves the District of the expenses incident to electing and maintaining such a body. Notwithstanding their disfranchisement, it may be said that, though there is a certain demand on the ground of general principles that the people should be given a voice in the selection of the officials who are to govern them, and also in the national

elections, in general the population of the District is satisfied with its form of government. As at present administered the government of the District of Columbia certainly approaches more nearly to the ideal of many municipal reformers, that public affairs should be administered strictly as a business enterprise, than does that of any other community of like importance in the United States.

CHAPTER XI

CONCLUSION

The task to which we have addressed ourselves has now been about completed. There remain only one or two points requiring brief mention before we close. All European nations that have embarked upon the policy of holding and administering colonial possessions have found the necessity for creating under the home government special departments or other services to have charge of colonial matters. The functions of these departments are the twofold ones, on the one hand of providing a means through which the supervision and control over the colonies possessed by the central government may be enforced, and, on the other, of furnishing a service through which action can be taken for the development of the material welfare of the possessions. In the United States, notwithstanding the magnitude of its interests in dependent territory, only a beginning in this direction has been made, and that only within the past three or four years. As regards the territories on the mainland, the only administrative connection between them and the central government consists in the obligation imposed upon their governors to make annual reports to the secretary of the interior. In the case of Alaska, as we have already seen, the different interests of the Territory that are not directly cared for

by the governor are looked after by the different administrative departments to which such interests seem most nearly to appertain. The result is that there is no one service at Washington whose duty it is to keep fully informed regarding the progress of events in the different territories and actively to intervene with a view to securing needed action. The need for such a central authority to have charge of the interests of the Territories and dependencies is excellently brought out by President Jordan in his article on "Colonial Lessons of Alaska," appearing in the *Atlantic Monthly* for November, 1898. After presenting a statement of the extent to which the population and interests of Alaska have suffered in consequence of the failure of Congress and the United States government to give adequate attention to its needs, he concludes:

> In general, the waste and confusion in Alaska arise from four sources—lack of centralization of power and authority; lack of scientific knowledge; lack of personal and public interest, and the use of offices as political patronage. In the first place, no single person or bureau is responsible for Alaska. The treasury department looks after the charting and patrol of its coast, the care of its animal life, the prohibition of intoxicating liquors, and the control of the fishing industries. The investigation of its fishery and marine animals is the duty of the United States Fish Commission. The army has certain ill-defined duties which have been worked out mainly in a futile and needless relief expedition with an opera-bouffe accompaniment of dehorned reindeer. The legal proceedings within the Territory are governed by the statutes of Oregon unless otherwise ordered. The department of justice has a few representatives scattered over the vast territory whose duty it is to enforce these statutes, chiefly through the farce

of jury trials. The land in general is under the control of the Department of the Interior. The bureau of education has an agent in charge of certain schools, while the President of the United States finds his representative in his appointee, the governor of the Territory. The office of governor carries large duties and small powers. There are many interests under the governor's supervision, but he can do little more than to serve as a means of communication between some of them and Washington.

Fortunately, the need for a special bureau or department to have general charge of affairs relating to the dependencies proper, now that such interests have become so much greater in extent on account of the recent acquisitions of territory, has at last been realized, and a beginning has been made toward the creation of such a service. Immediately upon the acquisition of Porto Rico and the Philippines, the secretary of war found it necessary to create in his department a division to take charge of the correspondence in relation to the civil government of these possessions, and the management of the many matters in relation to them that had to be attended to in the United States. This division, which was designated the division of insular affairs, demonstrated its usefulness to such an extent that it was transformed into a permanent bureau by the act of July 1, 1902, which provided for the government of the Philippines. This bureau may thus be said to correspond in a measure to the colonial departments of foreign governments. Through it, the President, secretary of war and Congress are able to keep in touch with occurrences in the dependencies that are under the supervision of the War Department. It, moreover, has

important administrative functions, as upon it falls the duty of looking after such matters as the making of contracts relative to the purchasing and forwarding of supplies, the floating of loans, the transportation of employees to the islands, etc. It should be noted, however, that this bureau falls short of being a full department of colonies and dependencies, as it has jurisdiction in respect only to that territory which is under the authority of the secretary of war. Thus it has no function in connection with either Porto Rico, Hawaii or Alaska. The need of a bureau to have charge of the interests of these possessions is scarcely less great than in the case of the Philippines. All of these territories have constantly pending matters concerning which action in the United States has to be taken, and they are often seriously embarrassed through having no service at Washington to look after them. Prospective investors or persons intending to locate in these territories are all the time complaining that there appears to be no one connected with the central government to whom they can appeal for information or advice. Finally, the President and Congress often seriously feel the want of some authority other than the governments of the possessions themselves to which they can appeal for information, when doubts arise as to whether affairs are in all respects being properly conducted. The most serious danger to good government in the dependencies that the future offers is, on the one hand, that after the first novelty and enthusiasm for a new work has worn off, less care and attention will be given by Congress and the people of the United States to the conduct of

affairs in the distant territories, and, on the other, that the persons appointed to the higher positions there will not be able to put into their work that peculiar interest and energy that is felt by those engaged in the organization of a new régime, and which counts for so much in respect to the results accomplished. As time goes on, therefore, the need for a central department with the special function of keeping in immediate touch with all that takes place in the dependent territories will increase rather than diminish. It is much to be hoped, therefore, that either the scope of the present bureau of insular affairs will be broadened so as to embrace all dependent territory or that provision to the same end will be made in some other way.

Before concluding this study emphasis should again be laid upon the fact that has been frequently alluded to, that the problem of the government and the administration of our dependencies has by no means been solved by the enactment of a constitution or organic act for each dependency, or even by the creation and putting into operation of systems of local government. It is one thing to construct a machine and another to ensure that it will, under all conditions, run smoothly. Students have a tendency to lay too great stress upon the mere enactment of legislative provisions regarding forms of government. Important though this work is, the efficient administration of such governments is still more important. This is particularly so when conditions such as exist in the insular dependencies have to be met. The problems of the future then are ones of administration rather

than of government. Whether the institutions that have been created in Porto Rico, the Philippines, Samoa or elsewhere will continue to work well or not, will depend very largely upon the manner in which they are administered, and the tact and ability with which the American representatives exercise their delicate functions of control and supervision. Years will be required before the difficulties involved in the political problems of the dependencies will be brought under control, the great questions of local government and finance worked out, and the thousand and one details of administrative machinery satisfactorily adjusted. Only conscientious and sustained activity on the part of those entrusted with authority will bring about the full realization of the high aims that the American people have set before them in respect to the government of the countries that have so unexpectedly come under the protection of their flag.

APPENDIX

Bibliographical Note: Official Publications Regarding the Territories and Dependencies of the United States.

EXCEPTIONALLY complete and easily accessible material exists for the study of the experience of the United States in the government and administration of dependent territory.

In regard to early acquisitions, and territories on the mainland, the most useful work is a compilation of all the organic acts that have been passed by Congress for their government, published under the title "Organic Acts for the Territories of the United States, with Notes Thereon, Compiled from the Statutes at Large of the United States; Also Appendixes Comprising Other Matters Relating to the Government of the Territories" (Senate Document No. 148, Fifty-Sixth Congress, First Session, 1900). Other legislation relative to territorial affairs may be found in the "Revised Statutes of the United States," the first edition of which was published in 1874 and a second edition in 1878; the "Supplement to the Revised Statutes of the United States, 1891," covering the years from 1874 to 1891 inclusive; and the "Statutes at Large" for the years subsequent to the latter date. Other public documents are the published laws of the territorial legislatures, and the annual reports which the governors of the Territories are required to make to the secretary of the interior. The report by Thomas Donaldson, "The Public Domain, etc., History, with Statistics, with Reference to the National Domain, Colonization, Acquirement of Territory, the Survey, Administration, and Several Methods of Sale and Disposition of the Public Domain of the United States, with Sketch of Legislative History of the Land System of the Colonies, and also that of

Several Foreign Governments" (Executive Document No. 47, Forty-Sixth Congress, Third Session, 1881) also contains material of interest.

For the government and administration of Hawaii the most important documents are the session laws of the Hawaiian legislature, the reports of the governor, the report in 1900 of the commission appointed in accordance with the joint resolution of Congress of July 7, 1898, to recommend a scheme for the permanent government of the islands, and the "Report of the Senate Sub-committee on Pacific Islands and Porto Rico on General Conditions in Hawaii, 1902," giving the result of a special investigation, made in accordance with a special resolution of the Senate.

So little action has been taken in respect to the government of Alaska that there is no extended literature in reference to this Territory. The existing laws can be found in the "Act making further provision for a civil government for Alaska and for other purposes" approved June 6, 1900, and the "Act amending the civil code of Alaska providing for the organization of private corporations, and for other purposes" approved March 2, 1903.

Turning now to documents relative to the government and administration of the islands acquired from Spain, a very voluminous and valuable official literature will be found. Of this material first mention should be made of certain reports of a general character. The congressional report on the "Treaty of Paris," a volume of several hundred pages, gives not only the text of the treaty, but the instructions given at various times to the American commissioners, a report of the proceedings of the conference at which the treaty was framed, and various collateral documents bearing upon the matter. Owing to the general interest in the constitutional questions raised by the so-called insular cases which came before the Supreme Court for decision, Congress has republished under the title of "Report of the Insular Cases" the full record of these cases as they came before the Supreme Court. Information regarding these cases has thus been made readily accessible. Supplementing this report is the excellent volume pub-

lished by the Bureau of Insular Affairs of the War Department containing the "Reports on the Law of Civil Government in Territory Subject to Military Occupation by the Military Forces of the United States," by Charles E. Magoon, law officer of the Bureau of Insular Affairs (Third Edition, Washington Government Printing Office, 1903). All Congressional legislation in relation to the Philippines, Porto Rico, Hawaii, Guam and Samoa, whether contained in special acts or constituting parts of appropriation and other laws, has been brought together and published by the Bureau of Insular Affairs under the title of "Compilation of the Acts of Congress, Treaties, and Proclamations Relating to Insular and Military Affairs from March 4, 1897, to March 3, 1903." (Senate Document No. 105, Fifty-Eighth Congress, Second Session.)

Next in logical order follow the various reports of the War Department giving an account of the action taken by the United States army officers for the administration of the islands of Porto Rico and the Philippines while under its jurisdiction. The most important of these consist of the reports of the military commanders exercising command in the islands. They embrace not only the ordinary reports of military operations but special reports regarding civil affairs, in which are set out in detail all the steps that were taken for the administration of these possessions. These reports are especially valuable as including an account of the conditions that existed, and of public institutions that were in operation, at the time that control was assumed by the military authorities. The official record of the action taken by them for the reorganization of civil institutions and the conduct of government is found in the "general orders" issued during the period of military control. These orders have all the force of legislation and continued in force after civil government was established except where expressly repealed. The study of the system of government as it existed under Spanish rule is also much facilitated by the translations that were made and published by the War Department of the organic acts, codes and fundamental laws applying to the islands that were in force when possession was taken. The annual reports of the secretary of war are also of

great value. These reports for the years 1899 to 1903 have been republished by the War Department in a single volume.

The most important documents bearing upon the present organization and administration of the governments of the Philippines and Porto Rico, however, are the published reports of the insular authorities and the volumes giving the laws enacted since the inauguration of civil government. These include the reports of the second Philippine Commission, the governor of Porto Rico, and the annual reports which the heads of the executive departments in Porto Rico are required to make to similar departments at Washington. Together they furnish a complete record of all action that has been taken, of the motives dictating it, and of the general results that have been obtained in practical operation.

Information regarding the government and administration of Samoa, Guam and the Panama Canal Zone can most readily be obtained from (1) "Tutuila: Memoranda Furnished by the Navy Department during the Second Session of the Fifty-Seventh Congress for the Use of the Committee on Pacific Islands and Porto Rico, United States Senate," 1902; (2) "Tutuila: Treaties, Conventions and State Papers Relating to the Acquisition of the Samoan Islands: For the Use of the Committee on Pacific Islands and Porto Rico, United States Senate," 1903; (3) "Tutuila: General Orders Issued by Naval Governor and Documents Relative Thereto in Force January 1, 1903;" (4) "Guam: Memoranda Furnished by the Navy Department During the Second Session of the Fifty-Seventh Congress for the Use of the Committee on Pacific Islands and Porto Rico, United States Senate," 1902; (5) "Guam: General Orders Issued by Naval Governor in Force December 20, 1902;" (6) Letter of the President Placing the Isthmian Canal Commission Under the Supervision and Direction of the Secretary of War and Defining the Jurisdiction and Functions of the Commission," 1904.

Finally should be mentioned the large class of special reports that have been issued either by the Federal Government or the insular governments having for their object the making known of the general conditions prevailing in the islands, their

resources, institutions, etc. Among these may be mentioned as the most important (1) "Report of the (First) Philippine Commission," 4 vols., 1900; (2) "Gazetteer of the Philippines," published by the Bureau of Insular Affairs of the War Department, 1902; a comprehensive work describing the geography, resources, population and institutions of the islands; (3) "Reports on the Census of the Philippine Islands," now in process of publication by the office of the Census, Department of Commerce and Labor; (4) "Report on the Island of Porto Rico: Its Population, Civil Government, Commerce, Industries, Products, Roads, Tariff and Currency, with Recommendations," by Henry K. Carroll, Special Commissioner for the United States to Porto Rico, 1899; (5) "Report of the United States Insular Commission to the Secretary of War upon Investigations Made into the Civil Affairs of the Island of Porto Rico, with Recommendations," 1899; (6) "Report on the Census of Porto Rico," 1899; (7) "Report of the Commission to Revise and Compile the Laws of Porto Rico" (House Document No. 52, Fifty-Seventh Congress, First Session, 1900, 2 vols): "Report of the Code Commission of Porto Rico," 1902; (8) "Register of Porto Rico," editions of 1901 and 1902; (9) "Porto Rico, Hawaii, Philippine Islands, Guam, Samoan Islands and Cuba: Their Area, Population, Agriculture and Mineral Products; Imports and Exports by Counties; and the Commerce of the United States Therewith" (from the Summary of Commerce and Finance for July, 1901, Bureau of Statistics, Treasury Department); (10) "Territorial and Commercial Expansion of the United States, 1800-1900, the Additions to National Area and their Subdivision into Territories and States, and Statistics of Growth in Population, Wealth, Commerce and Production" (from the Summary of Commerce and Finance for August, 1902, Bureau of Statistics, Treasury Department).

The foregoing enumeration by no means gives a complete list of all the official publications that have been issued by the United States Government in relation to the insular possessions. In addition to those that have been mentioned there are a large number of congressional reports and special studies issued by certain of the executive departments at Washington.

Such, for example, are the reports on education issued by the Department of Education, on labor by the Labor Department, on agriculture by the Department of Agriculture, etc. Mention in conclusion should also be made of the very useful biographies that have been published by the Library of Congress. They include (1) "A List of Books (with references to periodicals) on the Philippine Islands in the Library of Congress," 1903; (2) "Biblioteca Filipino," por T. H. Pardo de Tavera; (3) "A List of Books (with references to periodicals) on Porto Rico," 1901; (4) "A List of Books (with references to periodicals) on Samoa and Guam," 1901; (5) "A List of Books Relating to Hawaii (including references to collected works and periodicals)," 1898; and (6) "A List of Books (with references to periodicals) Relating to the Theory of Colonization, Government of Dependencies, Protectorates, and Related Topics," 1900. All of these, with the exception of No. 2, have been prepared by Mr. A. P. C. Griffin, Chief of the Division of Bibliography of the Library.

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